TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 791. 354 95.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO EX REL. GEORGE L. LAWRENCE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED APRIL 17, 1897.

(16,560.)

(16,560.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 781.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO EX REL. GEORGE L. LAWRENCE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 17, 1897.

1 In Supreme Court of United States.

THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company, Plaintiff in Error,
vs.
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error.
} Assignment of Errors.

Now comes the said The Lake Shore and Michigan Southern Railway Company, plaintiff in error, and for an assignment of errors herein says that at the April term, 1893, of the common pleas court of Cuyahoga county, Ohio, in a certain cause therein pending, wherein said State of Ohio *ex rel.* Geo. L. Lawrence was plaintiff and the said The Lake Shore and Michigan Southern Railway Company was defendant, a judgment was entered in favor of the plaintiff and against the defendant for the sum of one hundred dollars and costs of suit.

That at the January term, 1894, of the circuit court of Cuyahoga county, Ohio, said judgment was affirmed, and at the January term, 1897, of the supreme court of said State of Ohio, which is the highest court of law and equity in said State in which a decision of said cause can be had, said judgment was affirmed, all of which will more fully appear by an authenticated transcript of the record in said case filed herewith.

That in the rendering of said judgment by said court of common pleas and said judgments of affirmance by the said circuit and supreme courts error intervened, to the prejudice of this plaintiff in error, as will appear by said record, and that among the errors so intervening are the following:

1st. The rendering of said judgment and of the affirmances thereof was an interference with and a violation of paragraph 3, section 8, article 1, of the Constitution of the United States, as to the regulation of commerce between the several States, and
2 the statute of the State of Ohio on which said judgment was based and which was upheld by said judgment and the affirmances thereof, to wit, sec. 3320 of the Revised Statutes of Ohio, as amended April 13th, 1889, Ohio Laws, vol. 86, page 291, was and is repugnant to and an interference with and in violation of said provision of the Constitution of the United States, and said statute and the enforcement thereof by and through the said judgment of the courts of the State are an exercise by the State of the power to regulate commerce between the States.

2nd. The statute above referred to was by the said courts of Ohio construed and held to apply to trains of plaintiff in error which were engaged in interstate commerce, and the penalty imposed by the statute was inflicted upon plaintiff in error for failure to comply with said statute and stop a train which was engaged in interstate commerce.

The power and authority to regulate, control, or place any

burden upon such commerce being solely vested in the Congress of the United States by the aforesaid provision of the Constitution, the said statute as so construed by said courts is repugnant to and a violation of said constitutional provision.

3rd. Said judgment of affirmance rendered by said supreme court was and is erroneous, contrary to and without authority of law, and in violation and contravention of the Constitution of the United States.

4th. Other errors apparent upon the record.

The plaintiff in error prays that said judgment may be reversed.

GEORGE C. GREENE,
Attorney for Pl'ff in Error.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition in the judgment of a plea which is in the supreme court of Ohio, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The Lake Shore and Michigan Southern Railway Company, plaintiff in error, and The State of Ohio *ex rel.* George L. Lawrence, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error has happened, to the great damage of said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly

4 corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 24th day of March, A. D. 1897.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk*,
By JNO. VAN NOSTRAN,
Deputy Clerk.

Allowed by me with a supersedeas.
JACOB F. BURKET,
Chief Justice of the Supreme Court of the State of Ohio.

5 [Endorsed:] Filed Mar. 25, 1897, in supreme court of Ohio. J. B. Allen, clerk.

6 STATE OF OHIO, } ss:
City of Columbus, }

To the honorable Supreme Court of the United States:

Pursuant to the command of your within writ of error directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named, in a certain authenticated transcript to this writ attached, do send as within commanded.

In witness whereof I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, have set my hand and seal of said court this 25th day of March, 1897.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By ——— ———, *Deputy Clerk.*

7 UNITED STATES OF AMERICA, ss:

To the State of Ohio *ex rel.* George L. Lawrence, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Ohio, wherein The Lake Shore and Michigan Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered by said State court against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jacob F. Burket, chief justice of the supreme court of Ohio, this 23d day of March, 1897.

JACOB F. BURKET,
Chief Justice of the Supreme Court of Ohio.

We hereby acknowledge service of a copy of the above citation this 24th day of March, 1897.

W. H. POLHAMUS,
Att'y for Def't in Error.

8 [Endorsed:] Filed Mar. 25, 1897, in supreme court of Ohio. J. B. Allen, clerk.

9 Supreme Court of Ohio.

STATE OF OHIO, *Franklin County,* } ss:

I, Josiah B. Allen, clerk of said supreme court, do hereby certify that Jacob F. Burket, whose genuine signature is affixed to and who executed the foregoing citation, was at the time of its execution the chief justice of said court, duly elected and qualified to said office according to law.

Witness my hand and the seal of said court hereto affixed, at Columbus, Ohio, this 25th day of March, A. D. 1897.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

10 In Supreme Court of Ohio.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error.
} Supersedias Bond.

Know all men by these presents that we, The Lake Shore and Michigan Southern Railway Company, Addison Hills, and O. G. Getzen-Danner, citizens of the State of Ohio, are held and firmly bound unto the State of Ohio in the full and just sum of one thousand dollars; for the payment of which, well and truly to be made, we do jointly and severally bind ourselves, our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 23d day of March, 1897.

Whereas, on the 2d day of March, 1897, in a suit pending in the supreme court of Ohio between the said The Lake Shore & Michigan Southern Railway Company, plaintiff in error, and The State of Ohio *ex rel.* George L. Lawrence, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error has obtained a writ of error and filed a copy thereof in the office of the clerk of said court to reverse the judgment in said suit, and has caused a citation to be issued, directed to said

11 defendant in error, citing and admonishing said defendant to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, on the second Monday in October next:

Now, the condition of this obligation if such that if the said The Lake Shore & Michigan Southern Railway Company shall prosecute its writ of error to effect and answer all damages and costs if it

fail to make good its plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY,
By W. H. CANNIFF, *General Manager.*
ADDISON HILLS. [SEAL.]
O. G. GETZEN-DANNER. [SEAL.]

Attest: N. BARTLETT,
Ass't Secretary.

[Seal Lake Shore & Michigan Southern Railway Co.]

Approved by—
HARRY L. VAIL,
Clerk Court Common Pleas.

[Seal Common Pleas Court of the County of Cuyahoga, Ohio.]

Filed Mar. 25, 1897, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

12 [Endorsed:] 4013. L. S. & M. S. R'y Co. *vs.* State of Ohio *ex rel.* Geo. L. Lawrence. Supersedeas bond.

13 Supreme Court of Ohio.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error. } Notice.

To the honorable judges of the court of common pleas of Cuyahoga county, Ohio, Greeting:

Whereas a certain cause was lately pending in your court wherein the above-named plaintiff in error was plaintiff and the above-named defendant in error was defendant, and in which judgment was rendered in favor of the defendant and against the plaintiff for the sum of one hundred dollars and costs, which judgment was subsequently affirmed on petition in error to this court; and whereas the above-named plaintiff in error has obtained the allowance by the Honorable Jacob F. Burket, chief justice of the supreme court of Ohio, of a writ of error to the United States Supreme Court, with supersedias, which has been transmitted to and received by our said supreme court of Ohio:

Now, this is to inform you that, in pursuance of said allowance of said writ of error, with supersedias, said The Lake Shore and Michigan Southern Railway Company has given bond, with surety, for such supersedias in the sum of one thousand dollars, conditioned that it, the said The Lake Shore and Michigan Southern Railway Company, shall prosecute its writ of error to effect and answer all damages if it fail to make good its plea in the Supreme Court of the

United States, which bond, executed in duplicate, has been
14 approved by the clerk of the court of common pleas of Cuyahoga county, as authorized by the chief justice of this court; and one of said bonds so executed and approved in duplicate has, with said writ of error, been deposited in our said supreme court of Ohio.

In witness whereof I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereunto set my hand and the seal of said court this — day of ——, A. D. 1897.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk.*

15 THE LAKE SHORE AND MICHIGAN Southern Railway Company, Plaintiff in Error, *against* THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE, Defendant in Error. } Petition for Writ of Error.

To the Honorable Jacob F. Burket, chief justice of the supreme court of the State of Ohio:

Your petitioner, The Lake Shore and Michigan Southern Railway Company, a citizen of the United States and of the State of Ohio, and having its principal place of business in said State, to your honor respectfully represents and sets forth that at the April term, A. D. 1893, of the common pleas court of Cuyahoga county, in the State of Ohio, in a case wherein said State of Ohio *ex rel.* George L. Lawrence was plaintiff and the said The Lake Shore and Michigan Southern Railway Company was defendant, a judgment was rendered by said court in favor of said relator and against your petitioner for the sum of one hundred dollars and costs.

Your petitioner prosecuted error in said cause to the circuit court of Cuyahoga county, Ohio, to reverse said judgment, but the same was affirmed by said court at the January term, 1894.

Your petitioner thereupon prosecuted error in said cause to the supreme court of Ohio to reverse said judgments, but the same were affirmed by said court at the January term, 1897.

Your petitioner further represents and states that in the rendition of said judgment by the said common pleas court and the said judgments of affirmance by the circuit and supreme courts
16 it became and was material and necessary to the case to determine whether paragraph 3, section 8, article 1, of the Constitution of the United States, as to the regulation of commerce among the several States, is in any manner interfered with or violated by the statute of the State of Ohio mentioned in the original petition in this cause, to wit, section 3320 of the Revised Statutes of Ohio as amended April 13th, 1889, Ohio Laws, vol. 86, page 291, or by the judgment of the court below or by the judgment of affirmance by the supreme court, your petitioner claiming that it would,

and that the statute and the said judgments were and would be repugnant to and an interference with and in violation of said provisions of the Constitution of the United States, and were & would be an exercise by the State of the power to regulate commerce between the States; which power is by said constitutional provisions solely vested in Congress; but said courts below and said supreme court (the latter being the highest court in said State in which a decision of said cause can be had) held and determined that said statute and said judgment are not repugnant to and do not so interfere with and violate said constitutional provisions, and are not an exercise by the State of the power to regulate commerce between the States, and held and determined against the claim of the plaintiff in error, all of which plainly appears upon the face of the record of said cause in the supreme court, a certified transcript of which record is presented herewith.

Wherefore your petitioner asks leave to have its writ of error in this behalf, to the end that it may be determined by the Supreme Court of the United States whether the action of said courts
17 and said statute are not repugnant to and in violation of said constitutional provisions as herein set forth and as shown by the record; and plaintiff further prays for a supersedeas, and that the amount of the bond may be fixed by your honor.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY,
By GEORGE C. GREENE,
General Counsel for said Company.

Writ of error and supersedeas allowed as prayed for in the foregoing petition, the plaintiff in error to execute to the defendant in errora n undertaking in the sum of one thousand dollars, conditioned according to law, with sufficient surety, and approved by the clerk of the courts of Cuyahoga county, Ohio.

March 23d, 1897.

JACOB F. BURKET,
Chief Justice of the Supreme Court of Ohio.

18 [Endorsed:] 4013. L. S. & M. S. R'y Co. *vs.* State of Ohio *ex rel.* Geo. L. Lawrence. Petition for writ of error. Filed Mar. 25, 1897, in supreme court of Ohio. J. B. Allen, clerk.

19 THE STATE OF OHIO, } *ss:*
City of Columbus, }

In the Supreme Court of Ohio, January Term, A. D. 1897.

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company, Plaintiff in Error, *vs.* THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant in Error.	# 4013. Error to the Circuit Court of Cuyahoga County.

Ap'l 30, 1894. Petition in error and waiver of summons filed.
" " " Circuit court transcript filed.
" " " Original papers filed.
" " " Printed record and proof of service filed.
" 14, 1896. Journal entry:

"Ordered by the court that said cause be, and the same is hereby, dismissed for want of preparation."
O. B. 14, p. 534.

" 23, " Motion by plaintiff to reinstate and notice filed.
" 28, " Consent of defendant to reinstate filed.
May 5, " Journal entry:

"Motion by plaintiff to reinstate cause No. 4013 on the general docket."

"Ordered by the court that said motion be, and the same is hereby, allowed, brief of plaintiff in error to be filed by June 1 and that of defendant in error by July, 1896."
O. B. 14, p. 567.

May 18, 1896. Plaintiff's printed briefs filed & proof of service.
June 1, " " supplemental printed brief filed.
" 2, " Proof of service of plaintiff's supplemental printed briefs filed.
" 22, " Defendant's printed briefs filed.
Mar. 2, 1897. Journal entry:

"This cause came on to be heard upon the transcript of the record of the circuit court of Cuyahoga
20 county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same hereby is, affirmed with costs. It is hereby certified that said plaintiff in error claimed in its brief and argument in this case that it was necessary and material to the case to determine whether paragraph three, section eight, of article one, of the Constitution of the United States, as to the regulation of commerce among the several States, is in any manner interfered with or violated by the statute of the State of Ohio mentioned in the petition herein or by the judgment of the court below or would be by an affirmance by this court of said judgment. The plaintiff in error claimed that said statute and

judgment of the court below and an affirmance by this court are repugnant to and in violation of said provision of the Constitution. The court below in its said judgment and this court by its affirmance of said judgment held said statute valid and adjudged against said plaintiff in error upon its defense to said action; and it is further certified that this court is the highest court in this State in which a decision of this case can be had. It is further ordered that said defendant in error recover his costs in this court expended, and that said plaintiff in error pay the costs by it made, and in default that execution issue therefor, and this cause is remanded to the court of common pleas for execution.

Ordered that a special mandate be sent the court of common pleas of Cuyahoga county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the circuit court of Cuyahoga county for entry."

O. B. 15, p. 234.

Mar. 10, 1897. Mandate issued.
" 11, " Original papers sent to clerk.

Costs.

Filing petition in error, $5.00, paid by Estep, Dickey, Carr & Goff.

Filing motion, $2.00, paid by Dickey, Brewer & McGowan.

This transcript, $2.00, paid by F. J. Jerome.

21 STATE OF OHIO, }
City of Columbus, } ss:

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing are all the entries in cause No. 4013, The Lake Shore & Michigan Southern Railway Company *vs.* The State of Ohio on complaint of George L. Lawrence, and that the same are truly taken and correctly copied from the records of said court, to wit, from Order Book No. 14, pages 534 and 567, and Order Book No. 15, page 234, and Minute Book No. 16, page 447.

Seal of the Supreme Court of the State of Ohio.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this twenty-third day of March, A. D. 1897.

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

22 [Endorsed:] Supreme court of the State of Ohio. No. 4013. The Lake Shore & Michigan Southern Railway Co. *vs.* The State of Ohio on complaint of George L. Lawrence. Transcript of docket and journal entries.

23 Supreme Court of Ohio.

STATE OF OHIO, } ss:
City of Columbus, }

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that Exhibit A, hereto attached, is a true printed copy of the record filed April 30th, 1894, in the supreme court of Ohio, in case No. 4013, entitled The Lake Shore and Michigan Southern Railway Company, plaintiff in error, against The State of Ohio *ex rel.* Geo. L. Lawrence, defendant in error, and used by this court in the consideration of this case.

Seal of the Supreme Court of the State of Ohio.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 1st day of April, A. D. 1897.

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

24 EXHIBIT "A." Josiah B. Allen, Clerk Supreme Court of Ohio, by John P. Dana, Deputy.

4013. 16 | 447.

In the Supreme Court, State of Ohio.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant in Error.

Record.

Estep, Dickey, Carr & Goff, attorneys for plaintiff in error.

Filed Apr. 30, 1894, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

25 In the Supreme Court of the State of Ohio.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant in Error.
} Petition in Error.

The plaintiff in error, The Lake Shore & Michigan Southern Railway Company, says, that at the January term, A. D. 1894, of the circuit court, within and for the county of Cuyahoga, and State of Ohio, The State of Ohio, on complaint of George L. Lawrence, defendant in error, recovered a judgment by the consideration of said court, against this plaintiff in error, in an action and proceeding then pending therein, wherein this plaintiff was plain-

tiff in error, and The State of Ohio, on complaint of George L. Lawrence, was defendant in error, a transcript of the docket and journal entries whereof, is filed herewith.

Plaintiff in error says, that there is error in the said record and proceedings, in this, to wit:

1st. That said circuit court erred in affirming the judg-
26 ment of the court of common pleas, which was in review in said action and proceeding, and rendering judgment against plaintiff in error therein.

2nd. That said circuit court erred in rendering a judgment in said action and proceeding, in favor of defendant in error, when it should have been rendered in favor of this plaintiff.

3rd. That said circuit court erred in the judgment rendered in said action and proceeding, because of other errors apparent upon the face of said record.

4th. That said circuit court erred because the facts found by the court of common pleas in said cause, action and proceeding, affirmatively showed that said common pleas court had no jurisdiction to render the judgment thus affirmed by said circuit court.

Plaintiff in error therefore prays, that said judgments of the circuit court, and the court of common pleas may be reversed, and that this plaintiff may be restored to all things it has lost by reason thereof.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Plaintiff in Error.

CLEVELAND, O., *April 9th*, 1894.

Now comes the defendant in error, and waives the issuing and service of summons in error in the above-entitled action, and enters his appearance herein.

W. H. POLHAMUS,
Attorney for Defendant in Error.

27 STATE OF OHIO, } *ss:*
Cuyahoga County, }

Common Pleas Court.

THE STATE OF OHIO on Relation of GEORGE L. LAWRENCE, Plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Defendant.
} Petition.

The complainant herein says, that this cause comes into this court upon appeal from the court of Joseph S. Grannis, a justice of the peace in and for Brooklyn township, county and State aforesaid.

Complainant further says that he is a resident of the village of West Cleveland, in said Brooklyn township. That on the 9th day of October 1890, and for a long time previous thereto, said village contained more than three thousand inhabitants. That defendant

is a corporation organized and operating a certain railroad under the laws of this State, that said railroad is located in part within said village of West Cleveland. That defendant on said 9th day of October 1890, and for a long time previous thereto and ever since has caused to be run daily both ways over that part of said railroad situate within said village three and more, regular
28 trains carrying passengers. That on said 9th day of October 1890, (said day, not being Sunday,) defendant did not stop nor cause to be stopped, more than one running each way over said railroad, of its regular trains carrying passengers, within said village of West Cleveland long enough to receive or let off passengers. The complainant therefore says that by reason of the premises and by force of section 3320 of the Revised Statutes of Ohio, the defendant has forfeited and become liable to the State of Ohio in the sum of one hundred dollars.

Wherefore this complainant prays for judgment against defendant for one hundred dollars.

ALEX. HADDEN,
Prosecuting Attorney, Cuyahoga County, Ohio.

STATE OF OHIO, }
Cuyahoga County, } ss:

George L. Lawrence being first duly sworn says the facts stated and allegations in the foregoing petition contained are true as he verily believes.

GEO. L. LAWRENCE.

Sworn to and subscribed before me by the said George L. Lawrence this 2nd day of January 1891.

W. H. POLHAMUS,
[SEAL.] *Notary Public.*

29 STATE OF OHIO, }
Cuyahoga County, } ss:

In the Court of Common Pleas.

THE STATE OF OHIO on Relation of GEORGE L. LAWRENCE, Plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Defendant.
} Amended Answer.

And now comes the above-named defendant The Lake Shore & Michigan Southern Railway Company, and for amended answer to the petition of plaintiff herein, says: That the following allegations contain- in said petition are admitted, to wit:

That this cause comes into this court on appeal. That complain-

ant is a resident of the village of West Cleveland. That this defendant is a corporation organized and operating a certain railroad under the laws of this State. That said railroad is located in part within said village of West Cleveland. That this defendant on the 9th day of October, 1890, and for a long time previous thereto and ever since, has cause- to be run, daily, both ways over that part of said railroad situated within said village, three or more regular trains carrying passengers. And this defendant denies each,
30 all and singular of the other allegations in said petition contained, not herein expressly admitted.

Second. And for a further and second defense to the several matters and things set forth in the plaintiff's petition, this defendant says, that it is a railroad company, owning and operating a railroad from Chicago, in the State of Illinois, through the States of Michigan, Indiana, Ohio, Pennsylvania and New York.

That it is and was at the time of the commencement of this action and on the 9th day of October, 1890, engaged in carrying passengers and freight to and from the State of Illinois, through each of said several States, to and into and from the State of New York, and in the business of interstate commerce, both in the carriage of passengers and freight. That it did not at the time of the commencement of this action, or on the 9th day of October, A. D. 1890, run daily both ways, or either way, over said road, through the village of West Cleveland, three regular trains carrying passengers, that did not have upon them, passengers who had paid fare and were entitled to ride on said trains, going in the one direction to the city of Buffalo through the State of Pennsylvania, and those trains going in the other direction, through the State of Indiana to the city of Chicago. That the stopping of such through trains in the village of West Cleveland, was and is a serious detriment and impediment to interstate commerce in the carriage of passengers between, into and through said several States, and that the stopping of such through passenger trains in said village of West Cleveland, would cause and would have caused great and serious detri-
31 ment and damage to this defendant and to the several passengers who had thus or would thus pay their fares for through transit from the said city of Chicago to said city of Buffalo, and from said city of Buffalo to said city of Chicago, causing each of said passengers unnecessary delay and damage in passing over said route. And this defendant further says that the stopping of said through passenger trains or either of them continuously on each day, when passing through said village of West Cleveland, would have produced and would produce great and irreparable injury to this defendant and to the public generally.

Defendant further says that the supposed law and statute of the State of Ohio upon which this action is based is null and void, and repugnant and contrary to article one, section eight, of the Constitution of the United States, which confers upon Congress the power to regulate commerce among the several States; and to the stat-es of the United States passed by virtue of such power.

Wherefore, this defendant having fully answered, prays to be hence dismissed with its costs.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Defendant.

O. G. GETZEN-DANNER,
Of Counsel for Defendant.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

Personally came M. R. Dickey, who being first duly sworn,
32 says that he is one of the attorneys for the defendant in the above-entitled cause, duly authorized in the premises, and that the facts stated and allegations contained in the foregoing amended answer are true as he verily believes.

MOSES R. DICKEY.

Signed by the said M. R. Dickey in my presence and by him sworn to before me on this 14th day of January, A. D. 1891.

C. H. GALE,
[SEAL.] *Notary Public.*

33 THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

In the Court of Common Pleas.

THE STATE OF OHIO on Relation of GEORGE L. LAWRENCE, Plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILROAD COMPANY, Defendant. } Reply.

And now comes the above-named plaintiff and for reply to defendant's answer herein says, that it admits that defendant is in the management and control of a railroad, which extends from Buffalo, New York, to Chicago, Illinois, through the several States in said answer named and that it is and was on the 9th day of October, 1890, engaged in carrying passengers and freight from the one end of said road to the other. And that the trains so running through the village of West Cleveland, carried passengers who had paid their fare and were entitled to ride on said trains from the one end of said road to the other.

But it denies that the stopping of such trains in the village of West Cleveland was or would be a serious detriment or impediment to interstate commerce in the carriage of passengers into and through said several States, or a violation of any contract or agreement, between defendant and said passengers, or a violation of any
34 interstate commerce law or regulation, or that the stopping of such through passenger trains in said village of West Cleveland would cause, or would have caused, great and serious detriment and damage to defendant, or to the several passengers who

had this or would thus pay their fares for through transit from said city of Chicago to said city of Buffalo and from said city of Buffalo to said city of Chicago over said road, or that it would have caused them unnecessary delay and damage in passing over said road. And it denies that the stopping of said through passenger trains or either of them continuously on each day, when passing through said village of West Cleveland would have produced or would produce, great and irreparable injury to defendant and to the public generally or to either of them.

Wherefore plaintiff prays as in its petition.

W. B. NEFF,
Pros. Att'y,
By T. K. DISSETTE.

STATE OF OHIO, } ss:
Cuyahoga County, }

George L. Lawrence being first duly sworn says that he is the complainant in the above action and that the statements and allegations in the above reply contained are true as he believes.

GEORGE L. LAWRENCE.

Sworn to before me by the said George L. Lawrence and by him subscribed in my presence this 18th day of May, A. D. 1891.

W. H. POLHAMUS,
Notary Public.

[SEAL.]

35 THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Court of Common Pleas.

THE STATE OF OHIO on Relation of GEORGE L. LAWRENCE, Plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Defendant.

No. 38631. Motion for a New Trial.

And now comes the defendant, The Lake Shore & Michigan Southern Railway Company, and moves the court for an order, setting aside the finding and decision and judgment of the court herein, and that the finding, decision and judgment of the court be vacated, and a new trial granted, for the following causes, to wit:

1. That the finding, decision and judgment of the court, is not sustained by sufficient evidence.

2. That the finding, decision and judgment of the court is contrary to law.

3. Error of law by the court in its conclusions of law, as applied to the facts in this case.

4. Because judgment should have been rendered in favor of this

defendant, and against the plaintiff, on the agreed statement of facts submitted to the court.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Defendant.

O. G. GETZEN-DANNER,
Of Counsel for Defendant.

36 THE STATE OF OHIO, }
Cuyahoga County, } ss:

In the Court of Common Pleas.

(Theodore L. Lindsay; bail, $70.00.)

THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Defendant.
} Appeal by Def't.

September term, 1890.

(Common pleas No. 38631. Circuit court ——.)

September term, 1890. (Dec. 5.) Transcript from the docket of J. S. Grannis, J. P., Brooklyn township filed. Judgment November 8, 1890; December 31, 1890. To court: The plaintiff has leave to file a petition by January 3rd, 1891.—Journal 107–392. January 3, 1891, petition filed; continued; January term 1891. (January 10.) Answer filed; January 14, 1891. To court: The defendant has leave to file an amended answer forthwith without prepayment of costs—Journal 108–25. January 14, 1891. Amended answer filed; continued April term, 1891, (May 2). Demand by defendant for a struck jury
37 filed, 10.25 a. m., May 4, 1891. Certified lists mailed to attorneys with notices to strike May 9, 1891, 9.15 a. m., May 6, 1891. To court: This cause is continued at the cost of the State of Ohio for which judgment is rendered against it.—Journal 109–88. May 18, 1891, reply filed. May 9, 1891, jury struck by clerk for plaintiff by request of plaintiff's attorney. Continued September term, 1891; continued January term, 1892; continued April term, 1892; continued September term, 1892; continued January term, 1893; continued April term, 1893. April 10, 1893, motion by defendant for a new trial filed; July 25, 1893. To court: At this term to wit, on the 8th day of April, 1893, the parties by their attorneys come and this cause comes on for hearing, whereupon both parties waive the intervention of a jury and submit this cause to the court, upon the petition of plaintiff, answer of the defendant, and plaintiff's reply thereto, and an agreed statement of facts. And upon due consideration thereof, the court, being requested by the defendant to state the conclusions of fact found, separately from the conclusions of law, on the hearing of the case, finds the facts in issue as follows: That the complainant is a resident of the village of West Cleveland in

Brooklyn township, Ohio. That on the 9th day of October, 1890, and for some time prior thereto, said village contained more than 3,000 inhabitants, and that it is a municipal corporation. That defendant is a corporation organized under the laws of the States of Ohio, New York, Pennsylvania, Indiana, Michigan and Illinois, and owns and operates a railroad that is located in part within said village of West Cleveland. That defendant on the 9th day of Octo-
38 ber, 1890, and for some time prior thereto, and for some time thereafter, caused to run, daily, both ways, over that part of said railroad situated within said village, three or more regular trains carrying passengers. That on said 9th day of October, 1890, said day not being Sunday, the defendant did not stop nor caused to be stopped, more than one of its regular trains for carrying passengers running each way within said village of West Cleveland, long enough to receive or let off passengers. That said railroad so operated by defendant and passing through said village, is owned and operated by defendant from Chicago in the State of Illinois, passing through the States of Illinois, Michigan, Indiana, Ohio, Pennsylvania and New York to the city of Buffalo. That said defendant was on and prior to said 9th day of October, 1890, and has been ever since engaged in carrying passengers and freight over said railroad, passing through said village of West Cleveland to and from Chicago in the State of Illinois, and other stations in Indiana and Michigan through each of said several States to and into the States of New York, Pennsylvania and Ohio and to the city of Buffalo and from the city of Buffalo in the State of New York and other stations in Pennsylvania as aforesaid, through and into each of said several States, and to the city of Chicago and is and then was engaged in the business of interstate commerce, both in the carriage of passengers and freight from into and through said States. That said defendant did not on the 9th day of October A. D. 1890, nor shortly prior thereto, or since, up to the time of the commencement of this suit, run daily, both ways or either way, over said road through the village of West
39 Cleveland, three regular trains nor more than one regular train each, carrying passengers, which were not engaged in interstate commerce, or that did not have upon them passengers who had paid through fare, and were entitled to ride on said trains going in the one direction from the city of Chicago to the city of Buffalo, through the States of Indiana, Ohio, and Pennsylvania and those going the other direction from the city of Buffalo through that States of Indiana, Ohio and Pennsylvania and those going the other direction from the city of Buffalo through said States to the city of Chicago. That on or about the said 9th day of October, A. D. 1890, the said defendant operated but one regular train carrying passengers each way, that was not engaged in carrying such through passengers; and said train did stop at West Cleveland aforesaid, on the day aforesaid, for a time sufficient to receive and let off passengers. The through trains that passed through West Cleveland on the 9th day of October, A. D. 1890, were train No. 1, limited express, had two baggage and express cars, one coach and

three sleepers, from New York to Chicago; passed Rockport at 1.40 a. m. Train No. 11, fast mail, had five U. S. mail cars, one coach and one sleeper from New York to Chicago, passed Rockport at 1.55 p. m. Train No. 21 had one U. S. mail car, two baggage and express cars, four coaches and one sleeper from Cleveland to Chicago; passed Rockport at 3.40 p. m. These trains all run west. Limited express train No. 4 had one baggage and express car and three sleepers from Chicago to New York, passed Rockport 2.35 a. m. Train No. 6 had one baggage and express car, three coaches and two sleepers, from Chicago to New York; passed Rockport, 1.20 a. m. Train No. 24, had one U. S. mail car, two baggage and express cars and seven coaches from Chicago to Buffalo; passed Rockport 10.02 a. m. Train No. 14, had three U. S. mail cars and one sleeper from Chicago to New York; passed Rockport 5.35 p. m. These last-mentioned trains all ran eastwardly. That the average time of delay necessarily required to stop a train of cars and sufficient time to receive and let off passengers would be three minutes, and that the number of cities and villages in the State of Ohio, containing three thousand inhabitants through which the aforesaid trains of the defendant passed on said day were thirteen, to wit: Conneaut, Ashtabula, Geneva, Painesville, Cleveland, West Cleveland, Elyria, Oberlin, Norwalk, Fremont, Sandusky, Toledo, and Bryan. The aforesaid being the facts agreed upon by and between the parties hereto, and no other or further evidence being given. And as conclusions of law the court finds that the requirements of said section 3320, Revised Statutes of Ohio as amended April 13, 1889, Ohio Laws, volume 86, page 291, are in no sense a regulation of commerce between the States. That the provision of this section is the regulation by the State of a corporate body of its own creation with reference to the domestic and local concerns of the State. That the fact that said corporation has engaged in carrying interstate passengers, and such passengers are to be found upon all of its trains which do not stop at said station, does not oust the legislative control of the State, and the said act of the legislature of Ohio is not in derrogation of section 8, article 1, of the Federal Constitution, granting to Congress power to regulate commerce among the States. That if the subject-matter of section 3320 does come within the provisions of said article 8 of the Federal Constitution so that the requirements of said section may be said to regulate interstate commerce, then the subject-matter of the regulation is one that is purely local in its character, depending entirely upon local conditions and surroundings for the determination in each case as to what constitutes suitable and proper regulation and therefore does not come under the exclusive commercial power of Congress, and as Congress has taken no action in respect to the subject-matter of this section this subject is open to control by the State, and the court finds that plaintiff is entitled to recover from the said defendant the sum of one hundred dollars. The court further finds as a conclusion of law that in the rendition of the judgment herein, it was and is necessary and material to the case to determine whether paragraph 3 section 8, article 1, of the Con-

stitution of the United States as to the regulation of commerce among the several States would be in any manner interfered with or violated by the judgment of the court herein rendered, the defendant claiming that it would; but this court as a conclusion of law, holds adversely to such claims. To each and all of which several findings of fact and conclusions of law, the defendant severally excepts and files its motion for a new trial of this cause, which motion is heard and overruled, to which ruling said defendant excepts. It is therefore considered that said plaintiff recover of said defendant said sum of one hundred dollars ($100.00) and
42 also its costs of this suit to be taxed; judgment is rendered against the said defendant for its costs herein. To which judgment the said defendant excepts. Journal 115–381.

THE STATE — OHIO, } ss:
Cuyahoga County, }

I, Levi E. Meacha*n*, clerk of the court of common pleas, in and for said county, do hereby certify that the above is a true transcript of the docket and journal entries of said court, in the above-entitled cause, and that the said —— —— entered into bond, with approved sureties, conditioned to abide and perform the order and judgment of the appellate court, and to pay all moneys, costs and damages which may be required of, or awarded against —— —— by said appellate court.

And I also certify that the enclosed are the original papers and pleadings filed in said cause, in the said court of common pleas.

Attest my hand and the seal of said court, at Cleveland, this 31st day of July, 1893.

LEVI E. MEACHAM, *Clerk,*
[SEAL.] By FRED. J. DENZLER,
Deputy Clerk.

43 THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Circuit Court.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant in Error.
No. 38631. Petition in Error.

The plaintiff in error, The Lake Shore & Michigan Southern Railway Company, says that at the April term, A. D. 1893, of the court of common pleas of Cuyahoga county, The State of Ohio, on complaint of George L. Lawrence, defendant in error, recovered a judgment by the consideration of said court, against plaintiff in error, in an action and proceeding then pending therein, wherein defendant in error was plaintiff, and plaintiff in error was defendant, a transcript of the docket and journal entries whereof is filed

herewith. Plaintiff in error says, that there is error in the said record and proceedings, in this, to wit:

1st. Said court erred in overruling the motion of plaintiff in error, for a new trial in said action and proceeding.

2nd. That the facts set forth in the petition, are not sufficient in law, to maintain the said action against plaintiff in error.

44 3rd. That said court erred in each of its conclusions of law so found by it in said action and proceeding, as appears by the record.

4th. That said judgment was given for the said defendant in error, when it ought to have been given for the said Lake Shore & Michigan Southern Railway Company.

5th. That the facts found by said court, did not entitle defendant in error to a judgment in his favor, in said action and proceeding.

6th. That the said court had no jurisdiction to render said judgment.

Plaintiff in error therefore prays, that said judgment may be reversed, and that it may be restored to all things it has lost by reason thereof.

ESTEP, DICKEY, CARR & GOFF,
Attorneys for Plaintiff in Error.

O. G. GETZEN-DANNER,
Of Counsel for Plaintiff in Error.

CLEVELAND, O., *August 2nd*, 1893.

Now comes the defendant in error, and waives the issuing and service of summons in error in the above-entitled action, and enters his appearance herein.

W. H. POLHAMUS,
One of the Attorneys for Defendant in Error.

45 STATE OF OHIO, } *ss:*
Cuyahoga County, }

In the Circuit Court.

(Com. Pleas Ex. Doc. —.)

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, Plaintiff,
vs.
THE STATE OF OHIO on Complaint of GEORGE L. LAWRENCE, Defendant.
} Error to Common Pleas.

Circuit court No. 1270. Common pleas No. 38631.

August 2, 1893.—Petition in error, transcript of docket and journal entries and original papers from common pleas.

March 9, 1894.—To court: This cause came on to be heard upon the petition in error, bill of exceptions, original papers and pleadings and the transcript of the record in the court of common pleas and was argued by counsel; on consideration whereof the judg-

ment of the said court of common pleas is affirmed, there being however in the opinion of the court reasonable ground for this proceeding in error.

It is therefore considered that said defendant in error recover of said plaintiff in error his costs herein. Ordered that a special mandate be sent to the court of common pleas to carry this
46 judgment into execution. To which ruling and judgment plaintiff in error excepts. Journal, 4–150.

STATE OF OHIO, *Cuyahoga County,* } ss:

I, Levi E. Meacham, clerk of the circuit court, in and for said county, do hereby certify that the above is a true transcript of the dock- and journal entries of said court in the above-entitled cause.

And I also certify that the enclosed are the original papers and pleadings filed in said cause, in said circuit court.

Witness my hand and the seal of said court, at Cleveland, this 5th day of April, 1894.

[SEAL.]

LEVI E. MEACHAM, *Clerk,*
By FRED. J. DENZLER,
Deputy Clerk.

Endorsed on cover: Case No. 16,560. Ohio supreme court. Term No., 781. The Lake Shore & Michigan Southern Railway Company, plaintiff in error, *vs.* The State of Ohio *ex rel.* George L. Lawrence. Filed April 17, 1897.

No. 95.

Brief of Greene for P. E.

95

Filed OCT. 12, 1898.

Supreme Court of the United States

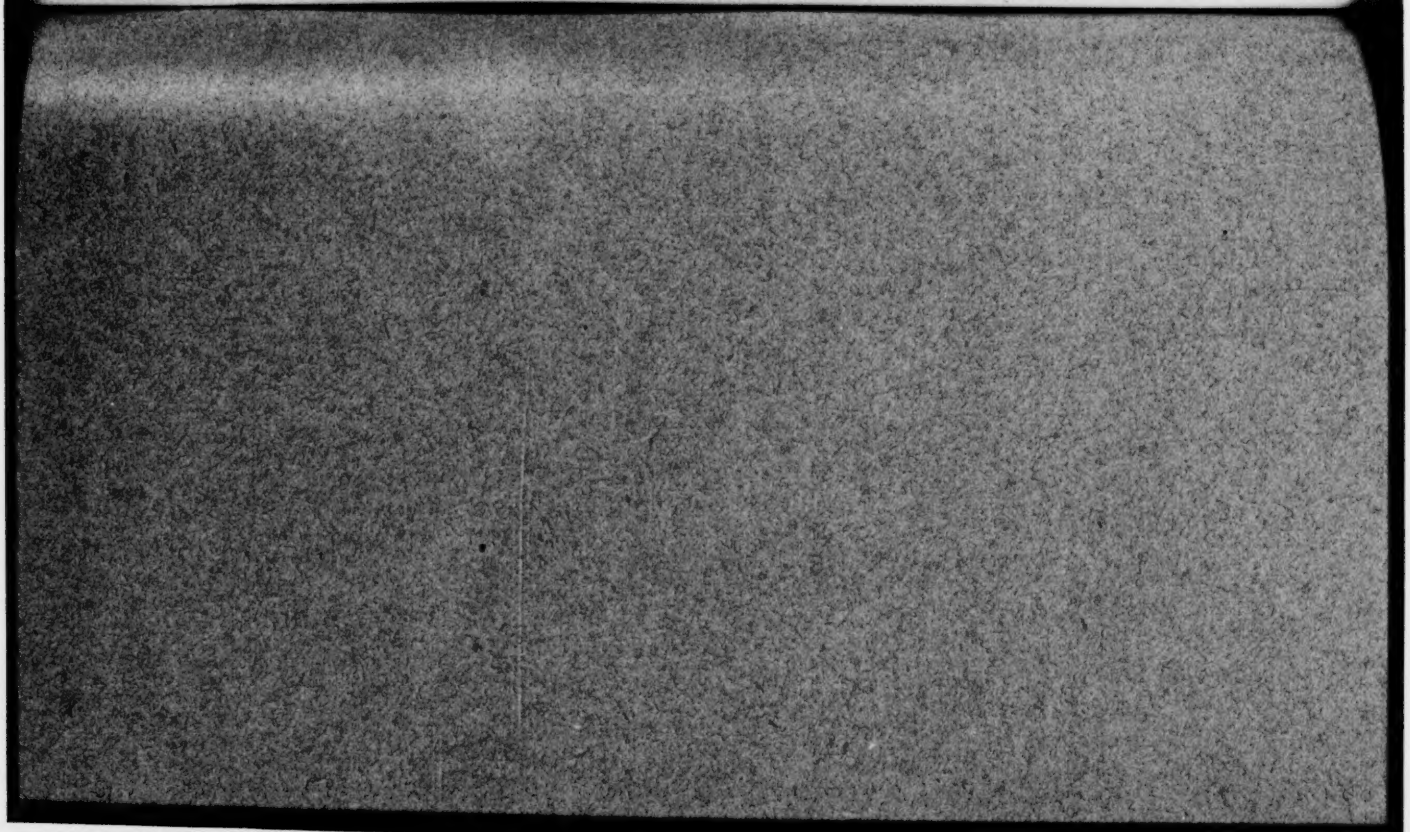
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, . . *Plaintiff in Error,*

AGAINST

THE STATE OF OHIO, Ex Rel. GEORGE L. LAWRENCE, ... *Defendant in Error.*

BRIEF OF PLAINTIFF IN ERROR.

GEORGE C. GREENE,
Of Counsel for Plaintiff in Error.



Supreme Court of the United States.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR, *vs.* THE STATE OF OHIO, EX REL. GEORGE L. LAWRENCE, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR.

ERROR TO SUPREME COURT OF OHIO.

STATEMENT.

This case comes to this court upon a Writ of Error to the Supreme Court of the State of Ohio from the judgment of that court affirming a judgment rendered in the Court of Common Pleas of Cuyahoga County, Ohio, in favor of the defendant in error against the plaintiff in error, for $100.00 penalty and costs.

The suit was originally brought in Court of Justice of the Peace, but was removed to the Common Pleas.

The Petition appears at page 11 of the Record, and the plaintiff therein claimed to recover a penalty for non-compliance with section 3320 of the Revised Statutes of Ohio, which reads as follows:

"SEC. 3320. (PASSENGER TRAINS MUST STOP AT CERTAIN STATIONS.) Each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers; if a com

pany, or any agent or employee thereof, violate, or cause or permit to be violated, this provision, such company, agent, or employee shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recovered in an action in the name of the state, upon the complaint of any person, before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county; and in all cases in which a forfeiture occurs under the provisions of this section, the company whose agent or employee caused or permitted such violation shall be liable for the amount of the forfeiture, and the conductor in charge of such train shall be held, *prima facie*, to have caused the violation."

The Answer, among other things, alleged:

"Second. And for a further and second defense to the several matters and things set forth in the plaintiff's petition, this defendant says, that it is a railroad company, owning and operating a railroad from Chicago, in the State of Illinois, through the States of Michigan, Indiana, Ohio, Pennsylvania and New York.

"That it is and was at the time of the commencement of this action and on the 9th day of October, 1890, engaged in carrying passengers and freight to and from the State of Illinois, through each of said several states, to and into and from the State of New York, and in the business of interstate commerce, both in the carriage of passengers and freight. That it did not at the time of the commencement of this action, or on the 9th day of October, A. D., 1890, run daily both ways, or either way, over said road, through the village of West Cleveland, three regular trains carrying passengers, that did not have upon them passengers who had paid fare and were entitled to ride on said trains, going in the one direction to the City of Buffalo through the State of Pennsylvania, and those trains going in the other direction, through the State of Indiana to the City of Chicago. That the stopping of such through trains in the village of West Cleveland, was and is a serious detriment and impediment to interstate commerce in the carriage of passengers between, into and through said several states, and that the stopping of such through passenger trains in said Village of West Cleveland, would cause and would have

caused great and serious detriment and damage to this defendant and to the several passengers who had thus or would thus pay their fares for through transit from the said City of Chicago to said City of Buffalo, and from said City of Buffalo to said City of Chicago, causing each of said passengers unnecessary delay and damage in passing over said route. And this defendant further says that the stopping of said through passenger trains or either of them continuously on each day, when passing through said village of West Cleveland, would have produced and would produce great and irreparable injury to this defendant and to the public generally.

Defendant further says that the supposed law and statute of the State of Ohio upon which this action is based is null and void, and repugnant and contrary to article one, section eight, of the Constitution of the United States, which confers upon Congress the power to regulate commerce among the several states; and to the states of the United States passed by virtue of such power."

The Reply admitted:

"That defendant is in the management and control of a railroad which extends from Buffalo, New York, to Chicago, Illinois, through the several states in said answer named, and that it is and was on the 9th day of October, 1890, engaged in carrying passengers and freight from the one end of said road to the other. And that the trains so running through the village of West Cleveland carried passengers who had paid their fare and were entitled to ride on said trains from the one end of said road to the other."

The Reply denied the other allegations of the answer.

Upon the trial a jury was waived, and the cause was submitted to the Court upon the pleadings and an agreed statement of facts;

Whereupon the Court found the facts in issue as follows:

"That the complainant is a resident of the village of West Cleveland in Brooklyn township, Ohio. That on the 9th day of October, 1890, and for some time prior thereto, said village contained more than 3,000 inhabitants, and that it is a municipal corporation. That defendant is

a corporation organized under the laws of the States of Ohio, New York, Pennsylvania, Indiana, Michigan, and Illinois, and owns and operates a railroad that is located in part within said village of West Cleveland. That defendant, on the 9th day of October, 1890, and for some time prior thereto, and for some time thereafter, caused to run, daily, both ways over that part of said railroad situated within said village, three or more regular trains carrying passengers. That on said 9th day of October, 1890, said day not being Sunday, the defendant did not stop, nor cause to be stopped, more than one of its regular trains for carrying passengers running each way within said village of West Cleveland, long enough to receive or let off passengers. That said railroad so operated by defendant and passing through said village, is owned and operated by defendant from Chicago in the State of Illinois, passing through the States of Illinois, Michigan, Indiana, Ohio, Pennsylvania, and New York to the City of Buffalo. That said defendant was, on and prior to said 9th day of October, 1890, and has been ever since, engaged in carrying passengers and freight over said railroad, passing through said village of West Cleveland to and from Chicago in the State of Illinois, and other stations in Indiana and Michigan, through each of said several states to and into the States of New York, Pennsylvania, and Ohio, and to the City of Buffalo, and from the City of Buffalo, in the State of New York, and other stations in Pennsylvania as aforesaid, through and into each of said several states and to the City of Chicago, and is and then was engaged in the business of interstate commerce, both in the carriage of passengers and freight from, into, and through said states. That said defendant did not on the 9th day of October, A. D. 1890, nor shortly prior thereto, or since, up to the time of the commencement of this suit, run daily, both ways or either way, over said road through the village of West Cleveland, three regular trains nor more than one regular train each, carrying passengers, which were not engaged in interstate commerce, or that did not have upon them passengers who had paid through fare and were entitled to ride on said trains going in the one direction from the City of Chicago to the City of Buffalo, through the States of Indiana, Ohio, and Pennsylvania and those going the other direction from the City of Buffalo through the States of Indiana, Ohio, and Penn-

sylvania and those going in the other direction from the City of Buffalo through said states to the City of Chicago. That on or about the said 9th day of October, A. D. 1890, the said defendant operated but one regular train, carrying passengers each way, that was not engaged in carrying such through passengers; and said train did stop at West Cleveland aforesaid, on the day aforesaid, for a time sufficient to receive and let off passengers. The through trains that passed through West Cleveland on the 9th day of October, A. D. 1890, were train No. 1, limited express, had two baggage and express cars, one coach and three sleepers, from New York to Chicago; passed Rockport at 1.40 A. M. Train No. 11, fast mail, had five U. S. mail cars, one coach, and one sleeper from New York to Chicago; passed Rockford at 1.55 P. M. Train No. 21 had one U. S. mail car, two baggage and express cars, four coaches, and one sleeper from Cleveland to Chicago; passed Rockford at 3.40 P. M. These trains all run west. Limited express train No. 4 had one baggage and express car and three sleepers from Chicago to New York; passed Rockport 2.35 A. M. Train No. 6 had one baggage and express car, three coaches, and two sleepers, from Chicago to New York; passed Rockport 1.20 A. M. Train No. 24 had one U. S. mail car, two baggage and express cars, and seven coaches, from Chicago to Buffalo; passed Rockford 10.02 A. M. Train No. 14 had three U. S. mail cars and one sleeper, from Chicago to New York; passed Rockport 5.35 P. M. These last-mentioned trains all run eastwardly. That the average time of delay necessarily required to stop a train of cars and sufficient time to receive and let off passengers would be three minutes, and that the number of cities and villages in the State of Ohio, containing three thousand inhabitants, through which the aforesaid trains of the defendant passed on said day were thirteen, to wit: Conneaut, Ashtabula, Geneva, Painesville, Cleveland, West Cleveland, Elyria, Oberlin, Norwalk, Fremont, Sandusky, Toledo, and Bryan. The aforesaid being the facts agreed upon by and between the parties hereto, and no other or further evidence being given."

And as conclusions of law the Court found as follows:

"That the requirements of said section 3320, Revised Statutes of Ohio, as amended April 13, 1889, Ohio Laws,

volume 86, page 291, are in no sense a regulation of commerce between the states. That the provision of this section is the regulation by the state of a corporate body of its own creation with reference to the domestic and local concerns of the state. That the fact that said corporation has engaged in carrying interstate passengers, and such passengers are to be found upon all of its trains which do not stop at said station, does not oust the legislative control of the state, and the said act of the legislature of Ohio is not in derogation of section 8, article 1, of the Federal Constitution, granting to Congress power to regulate commerce among the states. That if the subject-matter of section 3320 does come within the provisions of said article 8 of the Federal Constitution so that the requirements of said section may be said to regulate interstate commerce, then the subject-matter of the regulation is one that is purely local in its character, depending entirely upon local conditions and surroundings for the determination in each case as to what constitutes suitable and proper regulation, and therefore does not come under the exclusive commercial power of Congress, and as Congress has taken no action in respect to the subject-matter of this section this subject is open to control by the state, and the court finds that plaintiff is entitled to recover from the said defendant the sum of one hundred dollars. The court further finds as a conclusion of law that in the rendition of the judgment herein, it was and is necessary and material to the case to determine whether paragraph 3, section 8, article 1, of the Constitution of the United States as to the regulation of commerce among the several states would be in any manner interfered with or violated by the judgment of the court herein rendered, the defendant claiming that it would; but this court, as a conclusion of law, holds adversely to such claims. To each and all of which several findings of fact and conclusions of law, the defendant severally excepts and files its motion for a new trial of this cause, which motion is heard and overruled, to which ruling said defendant excepts. It is therefore considered that said plaintiff recover of said defendant said sum of one hundred dollars ($100.00), and also its costs of this suit to be taxed; judgment is rendered against the said defendant for its costs herein. To which judgment the said defendant excepts."

The judgment of the Court of Common Pleas was affirmed by the Circuit Court and the Supreme Court of the state.

The Supreme Court, in deciding the case, certified:

"That said plaintiff in error claimed in its brief and argument in this case that it was necessary and material to the case to determine whether paragraph three, section eight, of article one, of the Constitution of the United States, as to the regulation of commerce among the several states, is in any manner interfered with or violated by the statute of the State of Ohio mentioned in the petition herein or by the judgment of the court below or would be by an affirmance by this court of said judgment. The plaintiff in error claimed that said statute and judgment of the court below and an affirmance by this court are repugnant to and in violation of said provision of the Constitution. The court below in its said judgment, and this court by its affimance of said judgment, held said statute valid and adjudged against said plaintiff in error upon its defense to said action; and it is further certified that this court is the highest court in this state in which a decision of this case can be had."

Assignment of Errors.

The plaintiff in error assigned the following errors:

"1st. The rendering of said judgment and of the affirmances thereof was an interference with and a violation of paragraph 3, section, article 1, of the Constitution of the United States, as to the regulation of commerce between the several states, and the statute of the State of Ohio on which said judgment was based and which was upheld by said judgment and the affirmances thereof, to wit, sec. 3320 of the Revised Statutes of Ohio, as amended April 13th, 1889, Ohio Laws, vol. 86, page 291, was and is repugnant to and an interference with and in violation of said provision of the Constitution of the United States, and said statute and the enforcement thereof by and through the said judgment of the courts of the state are an exercise by the state of the power to regulate commerce between the states.

"2d. The statute above referred to was by the said courts of Ohio construed and held to apply to trains of plaintiff in error which were engaged in interstate commerce, and the penalty imposed by the statute was inflicted upon plaintiff in error for failure to comply with said statute and stop a train which was engaged in interstate commerce.

"The power and authority to regulate, control, or place any burden upon such commerce being solely vested in the Congress of the United States by the aforesaid provision of the Constitution, the said statute as so construed by said courts is repugnant to and a violation of said constitutional provision.

"3d. Said judgment of affirmance rendered by said Supreme Court was and is erroneous, contrary to and without authority of law, and in violation and contravention of the Constitution of the United States.

"4th. Other errors apparent upon the record."

The material facts, briefly stated, are:

The defendant, a corporation organized under the laws of six states, Ohio being one, was engaged in interstate commerce among said states, carrying both passengers and freight, upon trains which ran from Chicago to Buffalo.

October 9th, 1890, and before and since, it ran through West Cleveland only one train each way daily which was not engaged in interstate commerce, and that did not have interstate through passengers traveling thereon the whole length of the road.

The said one train each way did stop at West Cleveland on that day for sufficient time to receive and let off passengers. No other trains so stopped.

West Cleveland contained more than three thousand inhabitants, and there were thirteen cities and villages on the line of defendant's road in Ohio having like population.

The necessary delay caused by stoppage of a train is three minutes, making total delay in stopping at all said places in Ohio, thirty-nine minutes. (Record, p. 18.)

It is to be borne in mind that each and every passenger train which did not stop at West Cleveland was engaged in interstate commerce, and had on board passengers who had paid through fare between Buffalo and Chicago. (Record, 17–18.) It does not appear that any passenger on either of said trains desired to stop at West Cleveland, nor that any person desired to take either of said trains at that point. It does appear that one regular passenger train each way stopped there daily. It does not appear that anyone was prejudiced by the failure to stop more than the one train.

The statute above quoted, therefore, was a regulation which affected interstate commerce, and imposed a burden upon it, in requiring the stoppage within the state of interstate trains at local stations to receive and discharge passengers.

POINTS AND ARGUMENT.

The plaintiff in error contends that the power to regulate, control or place any burden upon interstate commerce being vested in the Congress of the United States, the statute in question, having been held by the Supreme Court of the state to apply to trains which were engaged in interstate commerce, is, as to such trains and commerce, null and void, and repugnant to the provisions of Article I, Section 8 of the Constitution of the United States.

1. *The enforcement of the statute against defendant so as to compel it to stop its trains engaged in interstate commerce would impose a severe burden upon the defendant and upon that commerce.*

If it be within the state's power to regulate and impose the burden to the extent imposed by this statute, it is

within its power to say to what extent it will regulate and impose burdens upon such commerce.

The question here is as to the right or power of the state; not as to the extent or reasonableness of the exercise of power.

If such right exists, the state may determine to what extent it shall be exercised, so that the constitutional provision would mean simply that Congress shall have power to regulate such commerce, subject to such regulations as the state may see fit to establish.

That contention cannot be maintained; but Congress has, solely and exclusively, the power to regulate such commerce; and no state regulation which imposes restrictions, delays or burdens thereon can be upheld.

II. *It is not conceded, but denied, that the state has authority, even under the "police power," to do that which would operate as a regulation of such commerce.*

As was said in Crutcher *vs.* Kentucky, 141 U. S., 47:

"But it does not follow that everything which legislature of state may deem essential for the good order of society can be set up against the exclusive power of Congress to regulate the operations of foreign and domestic commerce * * * It is within the province of state legislature to make regulations with regard to the speed of railroad trains in the neighborhood of cities and towns * * * and generally with regard to all operations in which the *lives and health* of people may be endangered, even though such regulations affect to some extent the operation of interstate commerce."

In Henderson *vs.* Wickham, 2 Otto, 259, it was held:

"It is no answer to the charge that a regulation of commerce by a state is forbidden by the Constitution to say that it falls within the police powers of the states; for to whatever class of legislative power it may belong, it is prohibited by the states if granted exclusively to Congress by that instrument."

In Hannibal & St. J. R. Co. *vs.* Husen, 95 U. S., 465-474, it is said:

"But whatever may be the nature and reach of the police power of a state, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government. * * * Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, *or burden laid upon it* by legislative authority, *is regulation*." (P. 530.)

In re Sanders, 52 Fed., 802-808, the Court says:

"I conclude that the police power of the state can not be held to embrace a subject confided exclusively to Congress by the Constitution of the United States. If the subject matter of state legislation is included in exclusive grant of commercial power to Congress, then the state enactment is void, even if it passed in the exercise of the police power of the state."

In Bowman *vs.* Chicago, etc., Railway Company, 125 U. S., 465, Mr. Justice Matthews said:

"Here is the limit between the sovereign power of the state and the federal power: That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the state; and that which does belong to commerce is within the jurisdiction of the United States."

In Brannan *vs.* Titusville, 153 U. S., 299, the Court reaffirms the language of Mr. Justice Harlan, in New Orleans Gas Co. *vs.* Louisiana Light Co., 115 U. S., 65, 661, that:

"Definitions of the police power must, however, be taken subject to the condition that the state can not, in its exercise, for any purpose whatever, encroach upon the powers of the general government or the rights secured by the supreme law of the land."

And the Court further says (page 302):

"We think it must be considered, in view of a long line of decisions, that it is settled that *nothing which is*

a direct burden upon interstate commerce can be imposed by the state without the assent of Congress, and that the silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free."

In Railroad Co. *vs.* Husen, 95 U. S. Rep., 465, a statute of Missouri, which prohibited the driving or conveying of any Texas, Mexican or Indian cattle into the state between the first day of March and the first day of November in each year, was held to be "in conflict with the clause of the Constitution that ordains 'Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes.'"

In the opinion it is said by Mr. Justice Strong:

"*This court has heretofore said that interstate transportation of passengers*, is beyond the reach of a state legislature. And if, as we have held, state taxation of persons passing from one state to another, or a state tax upon interstate transportation of passengers, is prohibited by the Constitution because a burden upon it, *a fortiori*, if possible, is a state tax upon the carriage of merchandise from state to state. Transportation is essential to commerce, or rather it is commerce itself; *and every obstacle to it, or burden laid upon it by legislative authority, is regulation.*" * * *

"We are thus brought to the question whether the Missouri statute is a lawful exercise of the police power of the state. We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the states was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. As was said in Thorp *vs.* The Rutland & Burlington Railroad Co., 27 Vt. 149, 'it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state.'" * * *

"Many acts of a state may, indeed, affect commerce, without amounting to a regulation of it, in the constitu-

tional sense of the term. And it is sometimes difficult to define the distinction between that which merely affects or influences and that which regulates or furnishes a rule for conduct. There is no such difficulty in the present case. While we unhesitatingly admit that a state may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the state; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the state, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce." * * *

"In coming to such a conclusion, we have not overlooked the decisions of very respectable courts in Illinois, where statutes similar to the one we have before us have been sustained. (Yeazel *vs.* Alexander, 58 Ill. 254.) Regarding the statutes as mere police regulations, intended to protect domestic cattle against infectious disease, those courts have refused to inquire whether the prohibition did not extend beyond the danger to be apprehended, and whether, therefore, the statutes were not something more than the exertions of police power. That inquiry, they have said, was for the legislature and not for courts. With this we cannot concur. The police power of a state cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and under color of it objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution."

In the case of Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S. Rep. 196–203, it is said by the Court:

"Commerce among the states consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the

rules by which it shall be governed, that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety. While with reference to some of them, which are local and limited in their nature or sphere of operation, the states may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require uniformity of regulation affecting alike all the states, the power of Congress is exclusive. Necessarily that power alone can prescribe regulations which are to govern the whole country. And it needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state legislation. Otherwise, there would be no protection against conflicting regulations of different states, each legislating in favor of its own citizens and products, and against those of other states. It was from apprehension of such conflicting and discriminating state legislation, and to secure uniformity of regulation, that the power to regulate commerce with foreign nations and among the states was vested in Congress."

"It cannot be too strongly insisted upon," said the Court in Wabash, etc., R. R. Co. *vs.* Illinois, 118 U. S., 557, "that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the states might choose to impose upon it, that the commerce clause of the Constitution was intended to secure. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states, which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of transportation of goods and chattels through

the country, the state within whose limits a part of the transportation must be done, could impose regulations concerning the price, compensation or taxation or any other restrictive regulation interfering with and seriously embarassing this commerce."

And in the case of Leisy *ex.* Hardin, 135 U. S., 100, known as the 'Original Package Case,' where the subject is fully considered, Mr. Chief Justice Fuller, in delivering the opinion of the court, used the following language:

"The power to regulate commerce among the states is a unit, but, if particular subjects within its operation do not require the application of a general or uniform system, the states may legislate in regard to them with a view to local needs and circumstances, until Congress otherwise directs; but the power thus exercised by the states is not identical in its extent with the power to regulate commerce among the states. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways, belongs to the class of powers pertaining to locality, essential to local inter-communication, to the progress and development of local prosperity, and to the protection, the safety and welfare of society, originally necessarily belonging to and, upon the adoption of the Constitution, reserved by the states, except so far as falling within the scope of a power confided to the general government." * * * *

"Inasmuch as interstate commerce consisting in the transportation, purchase, sale, and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it, or allow the states so to do, it thereby indicates its will that such commerce shall be free and untrammeled."

And in the same case it was said:

"And while, by virtue of its jurisdiction over persons and property within its limits, a state may provide for the security of the lives, limbs, health and comfort of persons, and the protection of property so situated, yet a subject

matter which has been confided exclusively to Congress by the Constitution *is not within the police power of the state*, unless placed there by congressional action."

Mr. Justice Miller, in Henderson *vs.* Mayor of New York, 92 U. S., 259, declared that however difficult it may often be to distinguish between one class of legislation and another, it is clear, from our complex form of government, that whenever the statute of a state invades the domain of legislation which belongs exclusively to Congress, it is void, no matter under what class of power it may fall, or how closely allied to powers conceded to belong to the states.

In Hannibal, etc., R. R. Co. *vs.* Husen, *supra*, it was said:

"We admit that the deposit in Congress of the power to regulate foreign commerce among the states, was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health, and safety. * * * But whatever may be the nature and reach of that power, it was added, 'it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government.'"

III. *But the regulation imposed by the statute is not within the scope of the "police power" of the state.*

That power "may be lawfully resorted to for the purpose of preserving the *public health, safety or morals, or the abatement of public nuisances.*" (Holden *vs.* Hardy, U. S. Supreme Court, decided Feb. 28, 1898.)

This, I submit, is a correct definition of the police power, and although in some cases the courts have, perhaps inadvertently, referred to the "convenience" of the public as within such power, I respectfully submit that

the proper definition cannot be so extended. (Black Const. Prohib., § 64, p. 82; 4 Harvard L. Rev., 222; Prentice Police Power, 269–276.)

If the "convenience" of individuals is within that power, and the state is at liberty to make such regulations as it deems necessary or proper for their convenience, then its power to regulate commerce is co-ordinate with that of the Congress.

In the State *vs.* Noyes, 47 Me. 189–211, the Court said:

"It is not denied, in behalf of the defendant, that the power contended for by the prosecuting officer of the state does actually exist in the legislature, so far as it has reference to the safety of persons and property. But it is denied that the power exists, so that it can be exercised so far as to establish laws promotive of the *convenience* simply, of individuals, among themselves; and it is also denied that private corporations can be in any degree affected by laws passed by the legislature, for the sole purpose of promoting the *convenience* of other private corporations, or the public generally, or any citizens, or classes of citizens, in contravention of provisions in the charter of such private corporations respectively, unless it is by the constitutional provision of taking private property for public purposes, and upon compensation therefor.

"With the legislature, the maxim of the law *salus populi suprema lex*, should not be disregarded. It is the great principle on which the statutes for the security of the people is based. It is the foundation of criminal law, in all governments of civilized countries, and other laws conducive to safety and consequent happiness of the people. This power has always been exercised by government, and its existence cannot be reasonably denied. How far the provisions of the legislature can extend, is always submitted to its discretion, provided its acts do not go beyond the great principle of securing the public safety—and its duty, to provide for this public safety, within well-defined limits and with discretion, is imperative. The principle is expressly recognized in the Constitution of this state (Article 1, Sections 1 and 20). All laws for the protection of the lives, limbs, health and quiet of persons, and the security of all property within

the state, fall within this general power of the government. The statute requirement that the bell upon the engine of a railroad shall be rung as the train approaches a crossing of other roads; the placing of sign-boards to warn persons who may be at or near a crossing; the erection of gates and bars, and the employment of persons to guard the crossings at the time of the passage of locomotives and cars; and of faithful and skillful brakemen upon the trains, and the coming to a stop at a specified distance of the place of the crossing of another railroad before crossing the same, and many others, are examples of the exercise of this power of the government, through the legislature. (Thorpe *vs.* R. & B. R. R. Co., 27 Vermont, 142)." * * * ."If the power existed to impose it in the slightest degree, we know of no line of limitation. It would certainly be convenient for the travelers living in a country thickly settled with inhabitants, to be able to find stations where they can take passage within the shortest distances of each other; and have the train come to a stand against the dwelling of everyone living near the railroad track, that he might be accommodated in taking his passage with greater convenience to himself, than it would be if he were obliged to take another mode to reach a station." * * *

"But from logical deductions from adjudged cases, which have been referred to, the doctrine that police regulations may be established by the legislature for the convenience of the public, or travelers on railroads, can not be upheld."

The case at bar is clearly distinguishable from Hennington *vs.* Georgia, 163 U. S., 299 (Sunday Law case), but the doctrine of that case supports my contention. There it was held (p. 303–4) that:

"The well-settled rule is that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of courts to so adjudge, and thereby give effect to the Constitution." (Citing Minnesota *vs.* Barber, 136 U. S. 313, and Mugler *vs.* Kansas, 123 U. S. 623–661.)

Here the statute has no relation to "the public health, the public morals or the public safety."

Again in that case the Court said (p. 317):

"These authorities make it clear that the legislative enactments of the states *passed under their admitted police powers, and having a real relation to the domestic peace, order, health and safety of the people*, but which, by their necessary operation, affect to some extent, or for a limited time, the conduct of commerce among the states, are yet not invalid by force alone of the grant of power to Congress to regulate such commerce."

Here the statute has no relation whatever "to the domestic peace, order, health or safety of the people."

In that case the law was upheld because it belonged to a class of local laws described by the Court as follows:

"Local laws of the character mentioned have their source in the powers which the states reserved, and never surrendered to Congress, *of providing for the public health, the public morals and the public safety.*"

There it was held that the law prohibiting transaction of secular business on Sunday, and declaring that on and during that day, fixed by law as a day of rest for all the people within the state from toil and labor, was a valid exercise of the police power of the state as an ordinary police regulation (p. 318). It may well be maintained that such a law was designed to promote the public health and morals, but can it be maintained that the stoppage of interstate trains at local way stations to take on and let off passengers would promote public health, morals or safety? Clearly not.

In Illinois Central R. R. *vs.* Illinois, 163 U. S., 142, this Court said (p. 153):

"The state may make reasonable regulations to secure the *safety* of passengers, even on interstate trains, while within its borders. *But the state can do nothing which will directly burden or impede the interstate traffic of the company*, or impair the usefulness of its facilities for such traffic."

IV. *The fact that the defendant is a corporation created by the states does not subject it to such state regulations.*

It is true that the states gave to the defendant corporate existence, but the charters were granted by the states and accepted by the defendant and its constituent companies under and subject to the provisions of the United States Constitution in respect to regulations of interstate commerce. The state had the power to so create the corporations with power to engage in interstate commerce, and the corporations, having accepted their charters and constructed their roads thereunder, they have the right to engage in and carry on such commerce, subject only to such regulations by the state in relation thereto as the state might impose upon an individual carrier engaged in such commerce. So long as the company has the right to carry on interstate commerce, so long it is subject only to regulation thereof by Congress and not by the states.

The Congress, by act of June 15, 1866 (14 U. S. Stat., 66), provided that "Every railroad company in the United States * * * is hereby authorized to carry upon and over its road * * * all passengers * * * on their way from any state to another state, and to receive compensation therefor, and to connect with roads of other states, so as to form continuous lines for transportation of the same to the place of destination."

By this act and the Interstate Commerce Act, Congress has regulated interstate traffic so far as it deemed it proper or necessary to regulate.

The states may take away charters and withhold the right or power to do anything, but they cannot regulate the interstate commerce in which a corporation is engaged so long as it has lawful authority to be so engaged.

When the state authorizes a body of its creation to engage in interstate commerce, and so long as that authority exists, the paramount and exclusive right to regulate its

conduct in respect thereto resides in Congress, and the state must not interfere with, control or impose any regulations which would place a burden upon it. (See Fargo *vs.* Michigan, 121 U. S., 230.)

In Illinois Central Railroad Co. *vs.* Illinois, 163 U. S., 142, the Court said: "The state may doubtless compel the railroad company to perform the duty imposed upon it of carrying passengers and goods between its termini within the state. But so long as that duty is adequately performed by the company the state cannot, under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States." Here there is no pretense or evidence in this case that the company has not adequately performed its duty in respect to carrying passengers within the state, and upon the facts as they are admitted the attempt here is to apply this statute to interstate trains only, and thus interfere with the performance of paramount duties imposed upon the company, and with rights, powers and privileges granted to it by the Constitution and laws of the United States.

V. I insist that the defendant company has the right to start its train at Chicago with passengers for Buffalo, and pass through all the states without taking on or discharging passengers at any intermediate point, and that the state has no right to require that such train shall receive or discharge passengers within its limits. Unless this be true, then it is in the power of the state to require that every train engaged in interstate commerce shall stop at every station in the state to receive and discharge passengers or freight.

If the power to regulate exists in the state legislature, the extent to which it should be exercised would rest in legislative discretion, and the line where state regulation

should end and regulation by Congress begin, would be uncertain and dependent upon the will of the state legislature, and so the constitutional provision would be nugatory.

As was said by Chief Justice Waite, in Hall *vs.* DeCuir, 95 U. S., p. 488:

"We think it may safely be said that state legislation which seeks to impose a direct *burden* on interstate commerce or to *interfere directly with its freedom*, does encroach upon the exclusive power of Congress." Again, "If each state was at liberty to regulate the conduct of carriers, while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship; each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interest of others. * * If the public good requires such legislation, it must come from Congress, not from the states" (p. 491).

In the Passenger Cases, 7 How. 399, the position of Mr. Justice Story is approved, that the power "to regulate commerce with foreign nations and among the states is exclusively vested in Congress."

In the State Freight Tax Case, 15 Wall, 281, it is said: "Transportation is essential to commerce, and *every burden* laid upon it is *pro tanto* a restriction."

Mr. Justice Brewer, in delivering the opinion of the Supreme Court, *In re* Debs, 158 U. S., 564–581, says:

"The uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce."

In Burdick *vs.* People of Illinois, 149 Ill. 600, the Court says:

"In relation to the subject of commerce, including interstate passenger travel, the state cannot place any obstacle in the way of such travel, or impose any burden upon it."

It certainly cannot be contended that to require trains engaged in interstate traffic to stop at some or all way

stations, and receive and discharge way passengers and freight, would not impose a serious burden upon and greatly interfere with and hamper the through or interstate traffic.

If the state may exercise the power so far as is provided in the act under consideration, it may require that every train shall stop at every station and receive and discharge freight and passengers; and if Ohio may do it, every other state may do the same, and the public be deprived of the facilities now afforded for through traffic; so that instead of being able to make the trip from Chicago to New York in twenty-two hours, double that time must be consumed by stops at way stations, and the entire business of the country subjected to great burdens and annoyance.

If the state may thus interfere with interstate passenger traffic, it may do the same in relation to freight traffic, and the through interstate business be subjected to obstruction, delays and the annoyances incident to the local freight trains.

It is no answer to say that the states will not *unreasonably* exercise this power, and hence no injury is to be apprehended.

As before said, the question here is one of power, not of expediency, or of due or undue exercise of power.

VI. In the case of Gladson *vs.* Minnesota, 166 U. S. 427, the facts were essentially different from the facts in the case at bar, and the contention of the plaintiff in error here may be sustained without conflict with the decision in that case.

In that case the "train in question ran wholly within the State of Minnesota" and the Act of the legislature expressly provided, "this Act shall not apply to through railroad trains entering this state from any other state, or to transcontinental trains of any railroad" (p. 432).

In the case at bar the trains were interstate trains engaged in transporting passengers from and between Chicago and Buffalo through Ohio and other states, and the Supreme Court of the State of Ohio holds and decides that the statute in question in this case does apply to such interstate trains.

In Illinois Central case it was said:

"The question whether a statute which merely required interstate railroad trains, without going out of their course, to stop at county seats, would be within the constitutional power of the state, is not presented and can not be decided upon this record."

It is respectfully submitted that upon the record in this case is presented the question whether a statute, which controls and regulates the movement of interstate trains, compels them to stop at way stations and do a local business, prevents rapid transit of passengers booked for transportation through several states, and which compels them to await the pleasure and convenience of the people along their route of travel, is, or is not, a statute which imposes a burden upon and operates as a regulation of interstate commerce, or within the constitutional power of the state.

I insist that under the Constitution and laws an interstate common carrier, by railroad, stage coach, or otherwise, has the right to start his coach or train at any point in one state and pass to and through another state without taking up or setting down any passengers in the state through which he passes, and that it is not within the power of any state to prevent such transportation or to impose any burdens upon it which do not strictly relate to the health, morals or safety of the public.

For the reasons above stated the plaintiff in error asks that the judgment of the Supreme Court of Ohio be reversed.

GEO. C. GREENE,

Of Counsel for Plaintiff in Error.

Buffalo, April, 1898.

No. 95. 95

Brf. of Greene for P. E.

IN THE

Supreme Court of the United States

Filed Nov. 4, 1898.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, . . . *Plaintiff in Error,*

AGAINST

THE STATE OF OHIO, Ex Rel. GEORGE L. LAWRENCE, ... *Defendant in Error.*

REPLY BRIEF OF PLAINTIFF IN ERROR.

GEORGE C. GREENE,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR, *vs.* THE STATE OF OHIO, EX REL. GEORGE L. LAWRENCE, DEFENDANT IN ERROR.

REPLY TO BRIEF OF DEFENDANT IN ERROR.

Under the first point in defendant's brief it is said:

"Neither was it (the statute in question) construed and held by the courts of Ohio to apply to the trains of plaintiff in error which were engaged in interstate commerce, nor the penalty imposed by the said statute inflicted upon plaintiff in error for failure to comply with its requirements by stopping any train or trains which were engaged in interstate commerce."

I submit that there is nothing in the record which supports this statement. There is certainly nothing in the judgment of the Supreme Court to that effect. No opinion was delivered in the Supreme Court. In the opinion of the Circuit Court delivered in the case, however, it was said:

"Although the act in question may and, as the railroad company now conducts its trains, does affect the transportation of persons traveling through the State of Ohio from one state to another, we are of the opinion that the act is not a regulation of commerce between states, although it might be void if Congress, with its paramount authority, should pass an act with which this is inconsistent."

It may be fair to assume that the Supreme Court, having written no opinion, adopted the opinion of the Circuit

Court, and if so, it recognized or admitted that the statute in question "does affect persons traveling through the State of Ohio from one state to another;" a conclusion entirely inconsistent with the statement above quoted from defendant's brief.

It is further stated in defendant's brief that "the provisions of the section in question, do require that three trains daily shall stop, if so many are run; but it does not prevent the railroad company from running as many through trains that are not required to stop at these specified stations as they may choose, providing, however, that if three or more trains are run, at least three of them shall stop."

The record herein (pages 17, 18) shows that at the time and on the day it is claimed the act was violated, the railway company operated and run daily only three regular trains carrying passengers west-bound, and four trains east-bound, and but one of such trains each way was not engaged in interstate commerce, or did not have upon them passengers who had paid their fare and were to be carried between Chicago and Buffalo.

It seems to be the contention of the defendant in error that the statute means that if the railroad company runs three interstate trains it must stop them all, or run in addition thereto three other trains which shall stop as required, whether the business or interests of the public require them or not. This I submit is not a correct construction of the statute, but, on the contrary, it requires that if the company runs three or more regular passenger trains daily, three of them shall stop. Here the company ran three west-bound and four east-bound, and but one of them stopped, the others all being interstate trains, and the penalty was imposed by the judgment herein for not stopping three of those trains each way. If the contention of the defendant in error stated in his first point be

sustained it would in effect be held that the state legislature has power to declare and require that no railroad company may run trains engaged in interstate commerce through the state unless it at the same time runs an equal number of local trains, and stop them at all stations. Can it be said that a law which imposes or would impose such conditions upon a railroad company's interstate traffic, does not impose any burden upon interstate commerce? I submit that the state cannot lawfully impose any duties, obligations, burdens or penalties upon a railway company dependent upon its doing interstate business, or its regulations relating thereto.

It is further contended by defendant "that although a railroad company may engage in interstate commerce, yet the state granting that company its charter may regulate and control it in all local and domestic matters."

It seems to be the defendant's contention that because the state creates or has power to create or destroy a railway corporation, it may control and regulate its interstate business. If this be conceded, the power of Congress in that behalf is subordinate to that of the state, and the state would have power to prohibit railroad companies engaging in interstate commerce. The defendant company, as appears by the record (page 17) is a corporation organized under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, and has a continuous line of railroad extending from Chicago to Buffalo.

The act of June 15, 1866 (U. S. Rev. Stat., p. 1022, sec. 5258) provides, "Every railroad company in the United States * * * is hereby authorized to carry upon and over its road, boats, bridges and ferries, all passengers, mails, freight and property on their way through any state to another state, and to receive compensation therefor and to connect with roads of other states so as to form

continuous lines for the transportation of the same to the places of destination." I submit that Congress, by this act, has legislated upon the subject matter of interstate commerce and transportation by railway companies, and has imposed certain duties and conferred certain rights upon interstate railroad companies, and such duties and rights are paramount and the state cannot lawfully interfere with, burden, regulate or control them.

The contention of defendant in error, stated in the third point, that the power of Congress over the regulation of interstate commerce is not exclusive, and that it is no more exclusive than its power to levy taxes, is so clearly contrary to repeated decisions of this court that it does not seem proper to answer the proposition at length, but I may be permitted to quote the language of the Court from the opinion of Mr. Justice Fuller in the Rohrer case, 140 U. S. 545:

"The power of Congress to regulate commerce among the several states, when the subjects of that power are national in their nature, is also exclusive. The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free, except as Congress might impose restraint. Therefore it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several states."

But it is contended, as stated in the brief, that, "in the absence of any action on its part, the states may within their own limits exercise all the authority in that behalf that is necessary to the interests of good government."

This contention was well answered by Mr. Webster in his argument in Gibbons *vs.* Ogden, 9 Wheat. 1–17. He said:

"The states may legislate, it is said, whenever Congress has not made a plenary exercise of its power. But who is to judge whether Congress has made this plenary exercise of power? It has done all that it deemed wise; and are the states now to do whatever Congress has left undone? Congress makes such rules as in its judgment the case requires, and those rules, whatever they are, constitute the system. All useful regulation does not consist in restraint; and that which Congress sees fit to leave free is a part of the regulation as much as the rest."

Not only has Congress acted and legislated in relation to interstate railroads and trains, as hereinabove stated, but by the Interstate Commerce Act, and the act providing for equipment, it has provided rules and regulations for the control of railroads and railroad trains, and has constituted a tribunal, the Interstate Commerce Commission, with authority to make other rules and regulations.

So if it should be held, contrary to former decisions, that until Congress acts the state has power to regulate, it would not aid the defendant in error, because here Congress has acted upon the subject matter, and established certain rules and regulations, and beyond those it is to be presumed the will of Congress is there shall be no other or further regulations until it sees fit to establish them.

GEO. C. GREENE,
Of Counsel for Plaintiff in Error.

No. 16560.

In the Supreme Court of the United States.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,

Plaintiff in Error,

VS.

THE STATE OF OHIO, ex rel GEORGE L. LAWRENCE,

Defendant in Error.

Brief for Defendant in Error.

W. H. POLHAMUS,
Attorney for Defendant in Error.

LEGAL & COMMERCIAL PUBLISHING CO.
CLEVELAND.

In the Supreme Court of the United States.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,

Plaintiff in Error,

vs.

THE STATE OF OHIO, EX REL GEORGE L. LAWRENCE,

Defendant in Error.

STATEMENT OF THE CASE.

Statement of the Case.

The original action out of which this proceeding sprung, was brought before a justice of the peace, under the provisions of Section 3320, of the Revised Statutes of Ohio, which provides that "each company shall cause three, each way, of its regular trains carrying passengers if so many are run daily, Sundays excepted, to stop at a station, city, or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers; if a company,.....violate, or cause or permit to be violated, this provision,.....such company,.....shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person, be-

lement the Case.

fore a justice of the peace of the county in which the violation occurs,....."

By an agreed statement of facts covering the entire controversy, (See Rec. page 13, middle of page,) the cause was tried solely upon the question of the constitutionality of the provisions of the Statute; and upon that question alone, is it here.

irst Point.

FIRST POINT.

Defendant in Error contends that the section of the Statute here involved, is not a regulation of, nor a burden upon interstate commerce.

That it has no application to trains which are engaged in interstate commerce, (**unless the railroad companies so choose;**) but is a proper, reasonable, and needful rule of conduct, local in its sphere of operation, prescribed by the State, for the government and control of corporations of its own creation, upon a subject or question **wholly** and **exclusively** within State jurisdiction.

That neither directly or by implication, is interstate commerce referred to by it, nor could such commerce be affected by complying with its requirements, **except at the behest of the railroad companies to which its provisions apply.** That it is neither repugnant or contrary to either the letter or spirit of the provisions of the Constitution of the United States, which confers upon Congress the power to regulate commerce among the several States.

Neither was it construed and held by the courts of Ohio to apply to the trains of plaintiff in error which were engaged in interstate commerce, nor the penalty imposed

by the said statute inflicted upon plaintiff in error for failure to comply with its requirements **by stopping any train or trains which were engaged in interstate commerce.** First Point

The Ohio courts found as conclusions of law, (See Record page 18,) "That the requirements of said section "3320, Revised Statutes of Ohio as amended April 13, 1889, "Ohio Laws, volume 85, page 291, **are in no sense a regula-"tion of commerce between the States.** That the provision "of this section is the regulation by the State of a corpor-"ate body of its own creation with reference to the domestic "and local concerns of the State. That the fact that said "corporation has engaged in carrying interstate passengers, "does not oust the legislative control of the State, and the "said act of the legislature of Ohio is not in derogation of "section 8, article 1, of the Federal Constitution."

It is true that the provisions of the section in question, do require that three trains daily shall stop, if so many are run; but it does not prevent the railroad companies from running as many through trains that are not required to stop at these specified stations, as they may choose, providing, however, that if three or more trains are run, at least three of them shall stop.

We contend that although a railroad company may engage in interstate commerce, yet the State granting that company its charter, may regulate and control it in all local and domestic matters.

Can it be rationally contended for one minute, that because a railroad company which has received its charter from a State, engages in carrying interstate passengers, and for sooth, such passengers are to be found upon all of its

Point. trains, that fact alone, would oust the State of its legislative control of such railroad, or railroad company, in regard to the number of trains the company should run, or where trains should stop?

Defendant in Error contends that a State has the right, and power, to require all railroads operated within the State, to furnish and run (within the State) as many trains, and in such manner, and with such regulations as to stoppages, as such State may deem proper and necessary for the accommodation of the public; and that such requirement **by the State,** is in no just sense an interference with interstate commerce.

Is there anything in the section of the Statutes here in controversy, that is not within the limits of this power? It simply requires any railroad company that runs three or more regular trains carrying passengers both ways through any city, village, or station, within the State, having 3,000 inhabitants, to stop three (at least) of them each way at said places; leaving the company to employ as many trains in interstate commerce, that do not stop at said stations as the company may choose.

Plaintiff in Error contends that on each of the passenger trains, passing through the village of West Cleveland, (the town in question) which did not stop therein, there were passengers who had paid through fare, and were entitled to ride on said trains from the city of Chicago to the city of Buffalo, or from the city of Buffalo to the city of Chicago; and that said trains were therefore engaged in interstate commerce. Grant it. But was there anything to hinder the railroad company from putting on there

trains which should stop at these stations, if it did not want the trains which were engaged in interstate commerce to stop? Or is there anything in this section that attempts to designate what **particular** trains shall stop? Any railroad company that does not run three, each way of regular trains carrying passengers, is not affected by this statute; and any company which runs that number of trains, **has its own choice** as to whether it will stop at these stations with its trains which are engaged in carrying interstate passengers, or place other trains on the road which shall so stop. Thus the question of interfering with interstate commerce, is **left entirely in the control and management of the railroad companies**. First Point.

So that if, in the case at bar, interstate commerce would be interfered with, by plaintiff in error complying with the provisions of this section of the statutes of Ohio, such interference cannot be attributed to the requirements of the **statute,** but to the free and untrammeled choice of plaintiff in error. Is that fact standing alone sufficient to warrant this court in finding that the section in question is a regulation of interstate commerce, and therefore, repugnant and contrary to the Constitution of the United States? We apprehend that the constiutionality of a law is not determined upon the mere suspicion of a possibility that a strict complyance with its provisions might under some peculiar culmination of circumstances seem to conflict with the Supreme Law of the Land, but rather upon the absolute certainty, that a compliance with its terms and requirements, would, or would not violate or conflict with that instrument.

SECOND.

If the section of the Ohio Statute here in question does affect interstate commerce, it is only local in its sphere of operation, and is a rule of that character which is best made and enforced by the local State Government, and is valid and binding until such time as Congress may see fit to enact laws which cover the same question, with which these local laws are at variance.

That interstate commerce, like all other industries, require regulation no one will deny, or that these artificial beings by which it is carried on, control a large part of the active wealth of the country, and exercise a concentrated power for good or evil, far greater than natural persons possibly can.

If such organizations, composed largely of persons residing out of the State, and clothed with loose and unguarded powers by other states or nations, can exercise these franchises within the State without sharing the public burdens, restrictions and regulations of that government which protects them, and free from the control and responsibility to which domestic corporations are subject, is it not easy to see that the day is not far distant when, with these superior advantages, the most important business interests in the State will have passed beyond its control?

Except for the provisions of Section 8, Article 1, of the Constitution of the United States, the power to regulate interstate commerce would have rested solely in the State by virtue of its sovereign power.

If the State cannot enforce the provisions of the section under consideration here, and the Federal Government does not enact suitable regulations in that direction, (and we insist that it has not,) then the whole matter will be left to the discretion and caprice of these great, dangerous, and unscrupulous corporations. Second.

Is it possible that this power was relinquished by the States for such a purpose as that? Or that if having taken it from the State, the National Government would be so lax in its duties, as to allow it to fall into the hands of those who above all others, are the most unsafe, and unqualified, to administer it? We insist that such a construction of the Constitution of this Government, would be foreign to our principles of State Sovereignty, unprecedented by the decision of any Court of the land, and unwise and pernicious in its results. **The State must of necessity** have this right.

The most that can be said, and in fact all that can be said against this section of our State Law, is that it interferes with the speed of trains; and that it imposes a burden on railroad companies. Does that fact alone make it unconstitutional? Burdens are not necessarily **regulations.**

In the case of Crutcher vs. Kentucky, 141 U. S. Reports, (page 61,) Justice Bradley says: "It is within the **undoubted power of the State legislature,** to make regulations with regard to the speed of railroad trains in the neighborhood of cities and towns. Such regulations are eminently local in thier character, and in the absence of Congressional regulation over the same subjects, **are free from all Constitutional objections, and unquestionably valid."**

ond. In Escanaba Co. vs. Chicago, 107 U. S. Reports, page 683, Justice Field says: "But the States have full power to regulate within their limits, matters of internal police; including in that general designation, whatever will promôte the peace, **comfort, convenience, and prosperity** of their people."

Let us ask, is not the whole object and aim of this Section 3320, merely to promote the comfort, convenience, and prosperity of the people of Ohio who may reside at or have occasion to visit these designated towns and cities?

The reports of the decisions of this Court, as well as all others, abound with cases illustrating and recognizing the rule that **all local arrangements and regulations** respecting highways, **railroads,** bridges, canals, ferries and wharves, within the State, their location, supervision, **and details of management,** though necessarily affecting commerce, both internal and external, and thereby incidentally operating measurably upon transaction of interstate commerce, are within the power and jurisdiction of the several States.

In Railroad Co. vs. Hudson, 95 U. S. Rep. 465, Justice Strong, in handing down the opinion of the Court says: "We admit that the deposit in Congress of the power "to regulate foreign commerce and commerce among the "States **was not a surrender** of that which may properly be "denominated police power. What that power is, it is diffi- "cult to define with sharp precission; it extends to the "protection of lives, limbs, health, **comfort,** and quiet of all "persons **and the protection of all property** within the State. "Many acts of a State may, indeed, affect commerce, with-

"out amounting to a regulation of it, in the constitutional "sense of the term." Second.

If a State may not determine the number of trains that shall stop at designated stations, and the frequency of such stops, has it any power to prevent a railroad company from promoting or retarding at pleasure, the growth, prosperity, and welfare of towns, cities and country along its line of road, or wrecking the entire business interests of any particular locality against which the railroad directors might cheerish some animosity? It seems to us that the mere possibility of such injustice and injury being perpetrated on the citizens of a State, not only warrants, but demands such action on the part of the State government as will effectually prevent its consummation; and that could only be effected by prescribing the number and kind of trains that should take on and deliver freight and passengers at these specified towns and stations, the frequency of such service, and the charges allowed therefor. To make railroad directors the sole and ultimate arbiters in these matters, would be hazardous in the extreme; and no state or government should be presumed so to have intended, without the most clear and positive statement by it, of such intention.

In Gloucester Ferry Co. vs. Pennsylvania, 114 U. S. Rep., 196-203, it is said by the Court: "The power to re-"gulate commerce with foreign nations and interstate com-"merce is vested in Congress, including the power to pre-"scribe the rules by which it shall be conducted. The "power also embraces within its control all the instrumen-"talities by which it may be aided and encouraged. The

cond. "subjects, therefore, upon which the power may be exerted "are of infinite variety. **With reference to some of them, "which are local and limited in their nature or sphere of "operation, the States may prescribe regulations until Con- "gress intervenes and assumes control of them."**

Can there be any doubt that the requirements and provisions of the section of the statutes in controversy at bar are local and limited in their nature or sphere of operation? Then if they are, even though they may impose a burden upon Plaintiff in Error in its pursuit of interstate commerce, yet these are such as the State has undoubted power to impose, and in the absence of Congressional regulation over the same subjects, are free from all Constitutional objections, and unquestionably valid, as they do not necessarily compel any delay nor affect interstate commerce in the carriage of passengers, in any way which is not permitted by the Federal Constitution.

Whether a railroad company would have the right to start its train, say at Chicago with passengers for Buffalo, and pass through all the States lying between, without taking on or discharging passengers at any intermediate point; and that none of the intervening States would have a right to require such trains to receive or discharge passengers within their limits, as Plaintiff in Error maintains, is not as I apprehend, a question or principle that is involved in this case, for in so far as this section of the Statutes is concerned, it might have a score of trains thus engaged, if only it was running the three trains each way daily over its road which did stop at these designated stations for the convenience of local passenger travel.

In Cooley's Constitutional Limitations, 3rd Ed., 580 and 581, the learned author says: "It cannot be doubted "that there is **ample power in the legislative department of "the state** to adopt all necessary legislation for the purpose "of enforcing the obligations of railway companies as car- "riers of persons and goods, to **accommodate the public im- "partially,** and to make every reasonable provision **for car- "rying with safety and expedition."** Second.

In Hegman vs. Western R. Co., 16 Barb., 353, the Court well says: "There is also the general police power "of the State by which persons and property are subject to **"all kinds of restraints and burdens,** in order to secure the "general comfort and prosperity of the State, **of the perfect "right in the legislature to do which** no question ever was "or upon acknowledged general principles can be made so "far as natural persons are concerned. And it is certainly "calculated to excite surprise and alarm that the **right** to "do the same in regard to railroads should be made a ser- "ious question. Railroads are public highways, and are "to be conducted in furtherance of the public objects of "their creation. Railroad charters **are contracts** made by the "legislature **in behalf of every person interested in any- "thing to be done under them. In consideration** of the fran- "chise they receive from the State, railroad corporations **"agree to perform certain duties toward the public. The "power of determining** those duties, **and enforcing their "performance is vested in the appropriate tribunals of the "State.** Without such power there would be danger that "railroad corporations, from the number and extent of their "operations, might become the most powerful instruments

cond. "of oppression in our whole system of administration. Be-
"ing creatures of the law, entrusted with the exercise of
"sovereign powers to subserve public necessities and uses,
"they are bound to conduct their affairs in furtherance of
"the public objects of their creation."

The Courts of Massachusetts had this same subject under consideration in Commonwealth vs. Eastern R. R. Co., 103 Mass. 258, and sustained the constitutionality of an act of the legislature compelling the railroad company to establish a flag station on its road and erect a station house there, **at which at least two trains each way on each day should stop.**

In the case of R. R. Commissioners vs. P. & O. C. R. R. Co., 63 Main Reports, page 280, the above case is cited and approved, and the Court therein say: (and the language of the court is peculiarly appropriate to the case at bar,) "If the directors of a railroad were to find it for "the interest of the corporation to refuse to carry any "freight or passengers, except such as they might take at "one end of the road and carry entirely through to the "other end, and were to refuse to establish any way sta-"tions, or to do any business for that reason, though the "road passed for a long distance through a populous part "of the State, this would be a cause manifestly requiring "and authorizing legislative interference; and on the same "ground, if they refuse to provide reasonable accommoda-"tions for the people of any smaller locality, the legislature "may reasonably interfere, so as to make the duty to pro-"vide the accommodation absolute." The second clause of the syllabus reads as follows: "It is not within the discre-

"tion of the directors of a railroad company **ultimately and** Second. •
"conclusively to determind the manner in which the cor-
"poration shall discharge the public duties enjoined upon
"it by its charter; that power and duty are devolved upon
"the **State Tribunals.**"

At page 281, the Court say: "In determining this "question, it should be remembered that the object of the "grant was to secure the construction of a public highway, "and that to be serviceable to the public, such highway "must be accessable and available at other places than the "termini, **and oftener than once a month or once a week** or "indefinitely and irregularly. The charter must have a "construction reasonable and consistent with the public "objects to be promoted under it, and not such an one as "tends to impair, defeat or subvert these objects. The "duty of the corporation and the rights of the public in "these respects are the same, even if the charter simply "requires the corporation to keep its road in repair, furnish "it with rolling stock and receive and convey passengers "and freight along the line of its road. Under such pro-"visions of a charter, it would be the duty of a corporation "to keep the road reasonably safe, provide such rolling "stock, establish such depots, and operate the road in such "a manner as would afford the public reasonable safety "and dispatch in the transaction of business upon the "road. The duties enjoined upon the corporation are min-"isterial duties, to do and perform what **the public con-"venience and necessity reasonably require** in respect to the "particulars specified. Nor is it within the discretion of "directors to determine ultimately what these public min-

Second.

"isterial duties are, or the manner in which they are to be "performed; to hold so would be to concede to the directors "the power to promote the private interests of the corpora- "tion, by subverting the public objects to be subserved by "the charter; the power both of determination and enfor- "cement are **necessarily vested in the State Authority."**

"To make railroad directors the sole and ultimate "judges of the times and places, when and where, the cor- "poration will 'receive and convey persons and articles' on "the line of its road, would be to give railroad corporations "the power to control the markets of the country, to create "a surplus or a famine in agricultural and other products; "to raise or reduce the wages of labor, or to promote or "retard at pleasure, the growth, prosperity, and welfare of "towns, cities and country. A construction that leads to "such results is inconsistent with the nature of the grant "to the corporation, contrary to its spirit, and subversive "of the public objects it was intended to promote. The "legislature will not be held to be so indifferent to the trust "committed to it, as to divest itself and the State tribunals "of authority over the manner in which the franchises "granted by it are to be exercised in the important particu- "lars under consideration, unless its intention to do so is "expressed in specific terms."

Says Mr. Justice Harlan in handing down the opin- ion of the Court, in N. Y. N. H. and H. Railroad vs. New York, 165 U. S. Reports, 632: "Such statutes," (referring to a local law of the State in regard to heating passenger cars and putting guard rails on bridges,) "are not directed "against interstate commerce. Nor is it within the mean-

"ing of the Constitution a regulation of commerce, al- Second.
"though it controls, in some degree the conduct of those en-
"gaged in such commerce. So far as it may affect interstate
"commerce, it is to be regarded as legislation in aid of
"commerce, and **enacted under the power remaining with**
"the State to regulate the relative rights and duties of all
"persons and corporations within its limits. Until dis-
"placed by such national legislation as Congress may right-
"fully establish under its power to regulate commerce with
"foreign nations and among the several States, the validity
"of the statute, so far as the commerce clause of the Con-
"stitution of the United States is concerned, cannot be
"questioned."....."These inconveniences cannot affect
"the question of power in each State to make such reason-
"able regulations.....as in its judgment, all things consi-
"dered, is appropriate and effective. Inconvenience of this
"character cannot be avoided so long as each State has
"plenary authority within its territorial limits to provide
"for the safety of the public, according to its own views
"of necessity and public policy, and so long as Congress
"deems it wise not to establish regulations on the subject
"that would displace any inconsistent regulations of the
"States covering the same ground.....The authority con-
"ferred by section 5258 of the Revised Statutes of the Uni-
"ted States upon railroad companies engaged in commerce
"among the States, whatever may be the extent of such
"authority, does not interfere in any degree **with the pass-**
"age by the States of laws having for their object the per-
"sonal security" (or convenience) "of passengers while
"traveling, within their respective limits, from one State

ond. "to another on cars propelled by steam."

See also, to the same point, Smith v. Alabama, 124 U. S. Reports, 465.

In Hennington v. Georgia, 163 U. S. Reports, 299, this Court decided that an act of the legislature of that State, which forbide the running of freight trains on any railroad in the State on Sunday, and provided for the trial and punishment, on conviction, of the superintendent of a railroad company violating that provision, that, "Although "it affects interstate commerce in a limited degree, yet it "is not, for that reason, a needless intrusion upon the dom- "ain of Federal jurisdiction, **nor strictly a regulation of in- "terstate commerce,** but is an ordinary police regulation, "designated to secure the well-being, and to promote the "general welfare of the people within the State, **and is not "invalid** by force alone of the constitution of the United "States; but is to be respected in the courts of the Union "until superseded and displaced by some act of Congress, "passed in execution of the power granted to it by the "Constitution. There is nothing in the legislation in "question in this case that suggests that it was enacted "with the purpose to regulate interstate commerce, or with "any other purpose than to prescribe **a rule of civil duty** "for all who.....are within the territorial jurisdiction of "the State."

If a State may, by virtue of the power remaining with it, to regulate the relative rights and duties of all persons and corporations within its limits, enact laws which by their enforcement, prevent the moving of **all freight trains** (including those which are engaged in interstate

commerce,) for one entire day out of every seven, may not a State under the same power, require railroad companies to stop a certain number of their passenger trains at designated stations, long enough to take on, and let off passengers; even though the railroad affected by such requirement, should see fit to limit the number of trains it would run over its road to such as were engaged in carrying interstate passengers; especially so, since the company is left entirely untrammelled in respect to determining the number of trains it will operate on its road, and as to what particular train shall stop. Second.

In County of Mobile v. Kimball, 102 U. S. Reports, 691, this Court declared, that "Commerce with foreign "countries and among the states, must be governed by "only one system of rules applicable alike to the whole "country, which Congress alone can prescribe.

But, "State legislation **is not forbidden** touching "matters either local in their nature of operation, or in- "tended to be mere aids to commerce, for which special re- "gulations can more effectually provide;" and on page 698 Mr. Justice Field in delivering the opinion of the Court, says: "The uniformity of commercial regulations, which "the grant of Congress was designed to secure against "conflicting State provisions, was necessarily intended only "for cases where such uniformity is praeticable. Where "from the nature of the subject **or the sphere of its opera- "tion** the case is local and limited, **special regulations "adapted to the immediate locality** could only have been "contemplated. State action upon such subjects can con- "stitute no interference with the commercial power of Con-

cond. "gress, for when that acts the State authority is suspended. "Inaction of Congress upon these subjects of a local nature "or operation, unlike its inaction upon matters affecting "all the States and requiring uniformity of regulation, is "not to be taken as a declaration that nothing shall be "done with respect to them, but is rather to be **deemed a "declaration that for the time being, and until it sees fit to "act, they may be regulated by State authority."**.....
"There has been, it is true, expressions by individual "judges of this Court, going to the length that the mere "grant of the commercial power, anterior to any action of "Congress under it, is exclusive of all State authority; but "there has been no adjudication of the Court to that "effect."

In the case at bar, Plaintiff in Error accepted its charter upon the implied condition that its franchise would be exercised subject to the power of the State to impose such reasonable regulations as the comfort, **convenience,** safety or welfare of society might require; and what is of more importance or of greater convenience and comfort to the public in connection with railway service, than to have trains stop at the stations on the line of their road at sufficiently frequent intervals to accommodate the public society. We maintain that the provisions and requirements of the section of the Statute in question, are only just and reasonable, and withal, exceedingly modest and on principle the least that could **reasonably** be expected, in return for the privilege and right of eminent domain, which the State conferred upon this corporation.

We further maintain that such requirements as the

section of the statute here in controversy provides, is in no way a regulation of, or interference with interstate commerce, but on the contrary **facilitates** it; for not every passenger who rides over this railroad from one State into another, gets on at large cities, or at the termini of the road, and who shall be able to say that the requiring of the trains to stop as provided, does not assist through passengers to take trains more frequently, and thereby aid interstate commerce. Second.

THIRD.

Third.

The Constitution of the United States, does not provide that commerce among the several States, shall be regulated **exclusively** by Congress. It neither expressly so declares, nor yet, by implication does its provisions warrant such construction.

It seems to us that Plaintiff in Error lays more stress on this part of section 8, of Article 1, of the Constitution of the United States, than sound reasoning and a careful study of that section will warrant.

It is true that the section declares that "The Congress shall have Power To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes." It also declares just as emphatically that "The Congress shall have Power To lay and collect Taxes, &c." In neither instance is the declaration made that such power shall be exclusive, **but shall have power,** the declaration being just as broad in the one case as in the other, and stands for no more in either, than it would if it had been written connectedly, and proclaimed that "The Congress

shall have Power To lay and collect Taxes, and to regulate Commerce with foreign nations, and among the several States."

Would any one ever suppose that because, "The Congress has this power to lay and collect taxes," this was a surrender on the part of the several States of their general taxing power, and that if Congress did not lay taxes, the General Government thereby intended that **no taxes should be laid,** and consequently any attempt on the part of a State to levy or collect taxes would be a violation of the Constitution of the United States? Such a proposition would be preposterous. Without such power no civilized State could discharge its functions. And could any civilized State discharge its functions without the power to regulate and control its own internal affairs, and especially the corporations of its own creation, even though to some extent interstate commerce should be regulated and controlled by such action of the State? Then are we not bound to assume that the framers of the Constitution of the United States took full cognizance of these facts when the section of the Constitution now under discussion was enacted, and that no intent to restrain or hamper the several State governments in the reasonable supervision and control of their own internal affairs, even though by so doing interstate commerce should in some degree be affected thereby, was intended either to be expressed or implied in that instrument.

No one will question the fact that if Section 8, Article 1, of the Constitution of the United States had not been adopted, the several States would have full, complete and

exclusive power to not only levy and collect taxes, but also to regulate commerce among themselves; nor can one doubt that if this Section 8, of Article 1, had provided that "The Congress shall have **exclusive power** to lay and collect taxes and regulate commerce among the several States, that such power had been taken from the States and vested solely in Congress." But inasmuch as in both instances it simply declares that Congress shall have power to do these things, and in no other language abridges the original State sovereignty in the premises, is it not a more reasonable and consistent construction of this section, in the light of Article 11, of the Articles of Confederation, of 1777, (which specifically declares that "Each State retains its "sovereignty, and **every power, jurisdiction and right,** which "is not by this confederation **expressly** delegated to the "United States, in Congress assembled,") to interpret this Section 8, as meaning simply that Congress has these powers and may, at its option assert them, but in the absence of any action on its part, **the States may within** their own limits, exercise all the authority in that behalf, that is **necessary** to the interests of good government. Third.

Had more been intended, by the framers of the Constitution, we are constrained to believe, that more apt and positive language would have been employed to express it. But with the wording as it is, and the necessity of certain local regulations to govern and control railroads, we see no conflict with the right of the State to prescribe rules which shall govern these corporations, in a reasonable way, as to the service they shall give to the communities along their lines within the State; and the question as to what is

reasonable in this respect, is most undoubtedly for the legislature to determine, and not for the courts.

And for these reasons and from the uniform holdings in the same way of the courts all over the land, we insist that the law in question is constitutional and valid; and wholesome in its operation, and ought to be sustained, and the judgment of the state courts affirmed.

W. H. POLHAMUS,
Attorney for Defendant in Error.

No. 95.

Opinion of Cir. Ct. of Ohio.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Dec 14, 1898.

No. 95.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO EX REL. GEORGE L. LAWRENCE.

OPINION OF CIRCUIT COURT OF CUYAHOGA COUNTY, OHIO.

8 OHIO CIRCUIT COURT REPORTS, 220.

(Eighth Circuit, Cuyahoga County, O., Circuit Court, January Term, 1894.)

Before Baldwin, Caldwell, and Hale, JJ.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY
vs.
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE.

Section 3320 of the Revised Statutes, directing that each railroad company shall cause three each way of its regular

trains carrying passengers, if so many are run daily, Sundays excepted, to stop at stations, cities, or villages having over three thousand inhabitants long enough to receive and let off passengers, is not a violation of that clause of the Constitution of the United States giving Congress power to regulate commerce among the several States, and is valid until Congress shall pass some act inconsistent therewith.

Error to the court of common pleas of Cuyahoga county.

BALDWIN, *J.*:

This action was originally one before a justice of the peace, by defendant in error, to recover a penalty under section 3320, Revised Statutes, for not stopping its trains at West Cleveland. The action went by appeal to the court of common pleas, was there decided in favor of the defendant in error, and we are asked in error to reverse the judgment of the court of common pleas.

The question raised is the validity of section 3320, Revised Statutes, and, without any formal recital, we will state such of the facts found by the court as seem proper to understand the bearing to that question.

On the 9th of October, 1890, the date complained of, the village was a municipal corporation having 3,000 inhabitants, and plaintiff in error was a corporation organized under the laws of Ohio and several other States, running and operating a railroad running through West Cleveland, and extending from Chicago to Buffalo, and daily ran thereon through said village each way three or more regular trains carrying passengers. On that day, not being Sunday, the company only stopped one of its trains running each way; that said railway was engaged in interstate commerce from Chicago to Buffalo; that there was not more than one regular passenger train each way not engaged in interstate commerce, or that did not have on board passengers who had paid their fares and

were entitled to ride through different States on said trains; that the one train each way not engaged in interstate commerce did stop at West Cleveland. Then follows an enumeration of trains running each way; a finding that the time required for stopping was three minutes; and that the total number of cities and villages on the line of the railroad having 3,000 inhabitants and over were thirteen in number.

The act in question provides:

"Each (railroad) company shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sunday excepted, to stop at a station, city or village containing over three thousand inhabitants for a time sufficient to receive and let off passengers. If a company, or any agent or employé thereof, violate or cause or permit to be violated this provision, such company, agent or employé shall be liable to a forfeiture of not more than one hundred and not less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county, etc."

It is claimed that this section of the statute is a regulation of commerce "among the several States," and therefore a violation of section 8 of the Constitution of the United States, providing that "Congress shall have the power to regulate commerce with foreign nations and among the several States and with Indian tribes;" that the legislature has no power to regulate the stopping of trains and that until Congress shall act, the railway company has absolute control of that matter, and may stop at stations or not as it pleases. This is a very important question, for if the railway has the power it claims, it can conduct its business with gross disregard of the interests of the public, and unmake towns and cities until Congress shall interfere.

A prior act has been before our supreme court in Penn-

sylvania Co. *vs.* Wentz, 37 Ohio St., 33. The court there said: "But the power of a railroad company to adopt or enforce such regulation is subject to legislative control," and the railroad company was held to be controlled by the act as passed in 1867, which is found in the Revised Statutes of 1880 as section 3320.

It is said, however, that the question of the constitutionality of the act itself was not discussed or decided in that case.

It is not contended that outside of the question made here, the company and the subject-matter is not proper for the action of the legislature; nor can it be. Ohio constitution, art. 13, par. 2; Penn. Co. *vs.* Wentz, 37 Ohio St., 333; Shields *vs.* State, 20 Ohio St., 86, and 95 U. S., 319.

Although the act in question may, and as the railroad company now conducts its trains, does affect the transportation of persons traveling through the State of Ohio from one State to another, we are of the opinion that the act is not a regulation of commerce between States, although it might be void if Congress, with its paramount authority, should pass an act with which this is inconsistent.

It is plain that the legislature had no intention to regulate the passage from State to State, but only to afford its own citizens proper and reasonable facilities for getting on and off the cars of a company created by it and subject to its reasonable regulations. Nor does the present act necessarily interfere with the rapid transit of a single passenger traveling through the State.

The act passed upon in 37 Ohio St. provides, "that every railroad company in this State shall cause *all* its trains of cars for passengers to entirely stop upon each arrival at any station."

The present act does not so provide, but only for three each way, if so many are run daily, Sundays excepted. It is not required that these shall be through trains, and no

proof was made that the regulation is so oppressive that it *necessarily* affects passengers from State to State.

It is not aimed at interstate commerce. It makes no discrimination against citizens of other States; it may even be for the convenience of interstate commerce as facilitating transportation to and from this place from other States.

The railroad may comply with the act solely by trains that do not engage in interstate commerce; that "it is not everything that affects commerce that amounts to a regulation of it within the Constitution," is a principle laid down in 15 Wallace, 293, and quoted with approval in 18 Wallace, 282, Delaware R. R. Tax.

It is determined in 21 Wallace, 473, that an act "may incidentally affect transportation," and still not amount to a regulation of commerce between the States or to a discrimination against the citizens of other States (Railroad *vs.* Maryland).

It is a part of the syllabus of Robbins *vs.* Shelby County, 120 U. S. Rep., 489, that "a State may enact laws that in practice operate to affect commerce among the States, as by providing in the legitimate exercise of its police power and general jurisdiction for the security and comfort of persons and protection of property;" and what more necessary for the comfort of persons and protection of propery than reasonable access for travel to a railroad passing through a town or city. (See also citation of the above case in State *vs.* Railway, 47 Ohio St., 137.)

"It cannot be doubted," says Mr. Cooley, "that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies or carriers of persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and despatch" (Cooley in Const. Lim., 724, 581). Nor is the act one necessarily of a national character. It is local, and may better be regulated by local laws. At what towns

trains should stop may depend on the size, distance between stations, scarceness of population, how many trains each day, character of business and population, and many other considerations which might be enumerated.

The subject may well come into the characterization of the Supreme Court of the United States in 116 U. S. Rep., 334, Commissioners' case, where it said: "The State may certainly require the company to fence so much of its road as lies within the State, to stop its trains at railroad crossings, to slacken speed while running in a crowded thoroughfare, to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, the convenience or the safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others."

Nor can any embarrassment result from such local regulations; the whole subject in principle and convenient practice seems to us covered by the language to be found in Mobile *vs.* Kimball, 102 N. Y., 698:

"Where from the nature of the subject or the sphere of its operation the case is local, and limited special regulations adopted to the immediate locality could not have been contemplated, State action upon such subjects can constitute no interference with the commercial power of Congress; for when that acts the State authority is suspended. Inaction of Congress upon these subjects of a local nature or operation, unlike its inaction upon matters affecting all the States and requiring uniformity of regulation, is not to be taken as a declaration that nothing shall be done with respect to them; but is rather to be deemed a declaration that for the time being and until it sees fit, they may be regulated by State authority."

The constitutionality of an act requiring "all regular passenger trains to stop at county-seats long enough to receive and let off passengers with safety" was affirmed in Railroad Co. *vs.* The People, 105 Ill., 657.

Both this statute and that considered in 37 Ohio St. seem fairly to come within the rules laid down in Mobile *vs.* Kimball, *supra.* But if they did, the present act does not cover "all trains," and does not necessarily affect a single interstate passenger, for the railroad company might comply with it without stopping a single train.

We think the act is valid, and the decision of the court of common pleas is affirmed.

ESTEP, DICKEY, CARR & GOFF,
For Plaintiff in Error.

W. H. POLHAMUS,
For Defendant in Error.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY *v.* OHIO.

ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

No. 95. Argued December 13, 1898. — Decided February 20, 1899.

The statute of Ohio relating to railroad companies, in that State which provides that "Each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village, containing over three thousand in-

habitants, for a time sufficient to receive and let off passengers; if a company, or any agent or employé thereof, violate, or cause or permit to be violated, this provision, such company, agent or employé shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person, before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county; and in all cases in which a forfeiture occurs under the provisions of this section, the company whose agent or employé caused or permitted such violation shall be liable for the amount of the forfeiture, and the conductor in charge of such train shall be held, *prima facie*, to have caused the violation," is not, in the absence of legislation by Congress on the subject, repugnant to the Constitution of the United States, when applied to interstate trains, carrying interstate commerce through the State of Ohio on the Lake Shore and Michigan Southern Railway.

THE case is stated in the opinion.

Mr. George C. Greene for plaintiff in error.

Mr. W. H. Polhamus for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

This action was commenced before a justice of the peace of the county of Cuyahoga, Ohio, to recover the penalty prescribed by section 3320 of the Revised Statutes of that State. That section is a part of a chapter relating to railroad companies, and, as amended by the act of April 13, 1889, provides:

"Each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers; if a company, or any agent or employé thereof, violate, or cause or permit to be violated, this provision, such company, agent or employé shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person, before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county; and in all cases in which a forfeiture occurs under the provisions of this section,

the company whose agent or employé caused or permitted such violation shall be liable for the amount of the forfeiture, and the conductor in charge of such train shall be held, *prima facie*, to have caused the violation." Laws of Ohio, 1889, vol. 86, p. 291; Rev. Stat. Ohio, 1890, § 3320.

The case was removed for trial into the court of common pleas of Cuyahoga County in which a judgment was rendered against the railroad company for the sum of one hundred dollars. Upon writ of error to the Circuit Court of that county the judgment was affirmed, and the judgment of the latter court was affirmed by the Supreme Court of Ohio.

The facts upon which the case was determined in the state court were as follows:

The plaintiff Lawrence is a resident of West Cleveland, a municipal corporation of Ohio having more than three thousand inhabitants.

The defendant railway company is a corporation organized under the respective laws of Ohio, New York, Pennsylvania, Indiana, Michigan and Illinois, and owns and operates a railroad located partly within the village of West Cleveland. Its line extends from Chicago through those States to Buffalo.

On the 9th day of October, 1890, as well as for some time prior thereto and thereafter, the company caused to run daily both ways over its road within the limits of West Cleveland three or more regular trains carrying passengers. And on that day (which was not Sunday) it did not stop or cause to be stopped within that village more than one of such trains each way long enough to receive or let off passengers.

On the day above named and after that date the company was engaged in carrying both passengers and freight over its railroad from Chicago and other stations in Indiana and Michigan through each of said several States to and into New York, Pennsylvania and Ohio and to Buffalo, and from Buffalo through said States to Chicago. It did not on that day nor shortly prior thereto nor up to the commencement of the present suit, run daily both ways or either way over said road through the village of West Cleveland, three regular trains nor more than one regular train each way carrying passengers "which were

not engaged in interstate commerce, or that did not have upon them passengers who had paid through fare, and were entitled to ride in said trains going in the one direction from the city of Chicago to the city of Buffalo, through the States of Indiana, Ohio and Pennsylvania, and those going the other direction from the city of Buffalo . . . through said States to the city of Chicago."

On or about the day named the company operated but one regular train carrying passengers each way that was not engaged in carrying such through passengers, and that train did stop at West Cleveland on that day for a time sufficient to receive and let off passengers.

The through trains that passed westwardly through West Cleveland on the 9th day of October, 1890, were a limited express train having two baggage and express cars, one passenger coach and three sleepers, from New York to Chicago; a fast mail train having five mail cars, one passenger coach and one sleeper from New York to Chicago; and a train having one mail car, two baggage and express cars, four passenger coaches and one sleeper from Cleveland to Chicago. The trains running eastwardly on the same day through West Cleveland were a limited express train having one baggage and express car and three sleepers from Chicago to New York; a train having one baggage and express car, three passenger coaches and two sleepers from Chicago to New York; a train having one mail car, two baggage and express cars and seven passenger coaches from Chicago to Buffalo; and a train having three mail cars and one sleeper from Chicago to New York.

The average time required to stop a train of cars and receive and let off passengers is three minutes.

The number of villages in Ohio containing three thousand inhabitants through which the above trains passed on the day named was thirteen.

The trial court found as a conclusion of law that within the meaning of the Constitution of the United States the statute of Ohio was not a regulation of commerce among the States and was valid until Congress acted upon the subject. This gen-

eral view was affirmed by the circuit court of Cuyahoga County and by the Supreme Court of Ohio.

The plaintiff in error contends that as the power to regulate interstate commerce is vested in Congress the statute of Ohio in its application to trains engaged in such commerce is directly repugnant to the Constitution of the United States.

In support of this contention it insists that an interstate railroad carrier has the right to start its train at any point in one State and pass into and through another State without taking up or setting down passengers within the limits of the latter State. As applied to the present case, that contention means that the defendant company, although an Ohio corporation deriving all its franchises and privileges from that State, may, if it so wills, deprive the people along its line in Ohio of the benefits of interstate communication by its railroad; in short, that the company if it saw fit to do so could, beyond the power of Ohio to prevent it, refuse to stop within that State trains that started from points beyond its limits, or even trains starting in Ohio destined to places in other States.

In the argument at the bar as well as in the printed brief of counsel, reference was made to the numerous cases in this court adjudging that what are called the police powers of the States were not surrendered to the General Government when the Constitution was ordained but remained with the several States of the Union. And it was asserted with much confidence that while regulations adopted by competent local authority in order to protect or promote the public health, the public morals or the public safety have been sustained where such regulations only incidentally affected commerce among the States, the principles announced in former adjudications condemn as repugnant to the Constitution of the United States all local regulations that affect interstate commerce in any degree if established merely to subserve the *public convenience.*

One of the cases cited in support of this position is *Hennington* v. *Georgia*, 163 U. S. 299, 303, 308, 317, which involved the validity of a statute of Georgia providing that "if any freight train shall be run on any railroad in this

State on the Sabbath Day (known as Sunday), the superintendent of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable for indictment for a misdemeanor in each county through which such trains shall pass, and on conviction shall be punished. . . . *Provided, always*, That whenever any train on any railroad in this State, having in such train one or more cars loaded with live stock, which train shall be delayed beyond schedule time, shall not be required to lay over on the line of road or route during Sunday, but may run on to the point where, by due course of shipment or consignment, the next stock pen on the route may be, where said animals may be fed and watered, according to the facilities usually afforded for such transportation. And it shall be lawful for the freight trains on the different railroads in this State running over said roads on Saturday night, to run through to destination: *Provided*, The time of arrival, according to the schedule by which the train or trains started on the trip, shall not be later than eight o'clock on Sunday morning." This court said: "The well-settled rule is, that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of courts to so adjudge, and thereby give effect to the Constitution."

The contention in that case was that the running of railroad cars laden with interstate freight was committed exclusively to the control and supervision of the National Government; and that although Congress had not taken any affirmative action upon the subject, state legislation interrupting interstate commerce even for a limited time only, whatever might be its object and however essential such legislation might be for the comfort, peace or safety of the people of the State, was a regulation of interstate commerce forbidden by the Constitution of the United States.

After observing that the argument in behalf of the defendant rested upon the erroneous assumption that the statute of Georgia was such a regulation of interstate commerce as was

forbidden by the Constitution without reference to affirmative action by Congress, and not merely a statute enacted by the State under its police power, and which, although in some degree affecting interstate commerce, did not go beyond the necessities of the case, and therefore was valid, at least until Congress intervened, this court, upon a review of the adjudged cases, said: "These authorities make it clear that the legislative enactments of the States, passed under their admitted police powers, and having a real relation to the domestic peace, order, health and safety of their people, but which, by their necessary operation, affect to some extent or for a limited time the conduct of commerce among the States, are yet not invalid by force alone of the grant of power to Congress to regulate such commerce; and, if not obnoxious to some other constitutional provision or destructive of some right secured by the fundamental law, are to be respected in the courts of the Union until they are superseded and displaced by some act of Congress passed in execution of the power granted to it by the Constitution. Local laws of the character mentioned have their source in the powers which the States reserved and never surrendered to Congress, of providing for the public health, the public morals and the public safety, and are not, within the meaning of the Constitution, and considered in their own nature, regulations of interstate commerce simply because, for a limited time or to a limited extent, they cover the field occupied by those engaged in such commerce. The statute of Georgia is not directed against interstate commerce. It establishes a rule of civil conduct applicable alike to all freight trains, domestic as well as interstate. It applies to the transportation of interstate freight the same rule precisely that it applies to the transportation of domestic freight." Again: "We are of opinion that such a law, although in a limited degree affecting interstate commerce, is not for that reason a needless intrusion upon the domain of Federal jurisdiction, nor strictly a regulation of interstate commerce, but, considered in its own nature, is an ordinary police regulation designed to secure the well-being and to promote the general welfare of the people within the

State by which it was established, and therefore not invalid by force alone of the Constitution of the United States."

It is insisted by counsel that these and observations to the same effect in different cases show that the police powers of the States, when exerted with reference to matters more or less connected with interstate commerce, are restricted in their exercise, so far as the National Constitution is concerned, to regulations pertaining to the health, morals or safety of the public, and do not embrace regulations designed merely to promote the *public convenience.*

This is an erroneous view of the adjudications of this court. While cases to which counsel refer involved the validity of state laws having reference directly to the public health, the public morals or the public safety, in no one of them was there any occasion to determine whether the police powers of the States extended to regulations incidentally affecting interstate commerce but which were designed only to promote the public convenience or the general welfare. There are however numerous decisions by this court to the effect that the States may legislate with reference simply to the public convenience, subject of course to the condition that such legislation be not inconsistent with the National Constitution, nor with any act of Congress passed in pursuance of that instrument, nor in derogation of any right granted or secured by it. As the question now presented is one of great importance, it will be well to refer to some cases of the latter class.

In *Gilman* v. *Philadelphia*, 3 Wall. 713, 729, which involved the validity of a state enactment authorizing the construction of a permanent bridge over the Schuylkill River within the limits of Philadelphia, and which bridge in fact interfered with the use of the river by vessels of a certain size which had been long accustomed to navigate it, the court said: "It must not be forgotten that bridges, which are connecting parts of turnpikes, streets and railroads, are means of commercial transportation, as well as navigable waters, and that the commerce which passes over a bridge may be much greater than would ever be transported on the water it ob-

structs. *It is for the municipal power to weigh the considerations which belong to the subject, and to decide which shall be preferred, and how far either shall be made subservient to the other.* The States have always exercised this power, and from the nature and objects of the two systems of government they must always continue to exercise it, subject, however, in all cases, to the paramount authority of Congress, whenever the power of the States shall be exerted within the sphere of the commercial power which belongs to the nation."

So, in *Pound* v. *Turck*, 95 U. S. 459, 464, which was a case where obstructions — piers and booms — had been placed under the authority of the State of Wisconsin in the Chippewa River, one of the navigable waters of the United States, it was said: "There are within the State of Wisconsin, and perhaps other States, many small streams navigable for a short distance from their mouths in one of the great rivers of the country, by steamboats, but whose greatest value in water carriage is as outlets to saw-logs, sawed lumber, coal, salt, etc. In order to develop their greatest utility in that regard, it is often essential that such structures as dams, booms, piers, etc., should be used, which are substantial obstructions to general navigation, and more or less so to rafts and barges. But to the legislature of the State may be most appropriately confided the authority to authorize these structures where their use will do more good than harm, and to impose such regulations and limitations in their construction and use *as will best reconcile and accommodate the interest of all concerned in the matter.* And since the doctrine we have deduced from the cases recognizes the right of Congress to interfere and control the matter whenever it may deem it necessary to do so, the exercise of this limited power may all the more safely be confided to the local legislatures."

The same principles were announced in *Escanaba Company* v. *Chicago*, 107 U. S. 678, 683. That case involved the validity of a certain local ordinance regulating the opening and closing of bridges over the Chicago River within the limits of the city of Chicago. That ordinance required the bridges to be closed at certain hours of the day, so as not to obstruct the passage over them of vast numbers of operatives and other

people going to and from their respective places of business. It was conceded that by the closing of the bridges at those hours vessels were obstructed in their use of the river. This court in that case said: "The Chicago River and its branches must, therefore, be deemed navigable waters of the United States, over which Congress under its commercial power may exercise control to the extent necessary to protect, preserve and improve their free navigation. But the States have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, *convenience and prosperity of their people.* This power embraces the construction of roads, canals and bridges, and the establishment of ferries, and it can generally be exercised more wisely by the States than by a distant authority. They are the first to see the importance of such means of internal communication, and are more deeply concerned than others in their wise management. Illinois is more immediately affected by the bridges over the Chicago River and its branches than any other State, and is more directly concerned for the prosperity of the city of Chicago, *for the convenience and comfort of its inhabitants, and the growth of its commerce.* And nowhere could the power to control the bridges in that city, their construction, form and strength, and the size of their draws, and the manner and times of using them, be better vested than with the State, or the authorities of the city upon whom it has devolved that duty. When its power is exercised so as to unnecessarily obstruct the navigation of the river or its branches, Congress may interfere and remove the obstruction. If the power of the State and that of the Federal government come in conflict, the latter must control and the former yield. This necessarily follows from the position given by the Constitution to legislation in pursuance of it, as the supreme law of the land. But until Congress acts on the subject the power of the State over bridges across its navigable streams is plenary." It was consequently adjudged that the city ordinance was not to be deemed such a regulation of interstate commerce as, in the absence of national legislation, should be deemed invalid.

In *Cardwell* v. *American Bridge Company*, 113 U. S. 205, 208, it was held that a statute of California authorizing a bridge *without a draw or opening for the passage of vessels* to be constructed over a navigable water of the United States within that State was not — in the absence of legislation by Congress — to be deemed repugnant to the commerce clause of the Constitution. The court, referring to prior cases, said: "In these cases the control of Congress over navigable waters within the States so as to preserve their free navigation under the commercial clause of the Constitution, the power of the States within which they lie to authorize the construction of bridges over them until Congress intervenes and supersedes their authority, and the right of private parties to interfere with their construction or continuance, have been fully considered, and we are entirely satisfied with the soundness of the conclusions reached. They recognize the full power of the States to regulate within their limits matters of internal police, which embraces among other things the construction, repair and maintenance of roads and bridges, and the establishment of ferries; that the States are more likely to appreciate the importance of these means of internal communication and to provide for their proper management, than a government at a distance; and that, as to bridges over navigable streams, their power is subordinate to that of Congress, as an act of the latter body is, by the Constitution, made the supreme law of the land; but that until Congress acts on the subject their power is plenary. When Congress acts directly with reference to the bridges authorized by the State, its will must control so far as may be necessary to secure the free navigation of the streams." The doctrines of this case were reaffirmed in *Huse* v. *Glover*, 119 U. S. 543.

In *Western Union Telegraph Co.* v. *James*, 162 U. S. 650, 662, the question was presented whether a state enactment requiring telegraph companies with lines of wires wholly or partly within the State to receive telegrams and on payment of the charges thereon to deliver them with due diligence, was not a regulation of interstate commerce when applied to interstate telegrams. We held that such enactments did not in any

just sense regulate interstate commerce. It was said in that case: "While it is vitally important that commerce between the States should be unembarrassed by vexatious state regulations regarding it, yet on the other hand there are many occasions where the police power of the State can be properly exercised to insure a faithful and prompt performance of duty within the limits of the State upon the part of those who are engaged in interstate commerce. We think the statute in question is one of that class, and in the absence of any legislation by Congress, the statute is a valid exercise of the power of the State over the subject."

So, in *Richmond & Alleghany Railroad* v. *Patterson Tobacco Co.*, 169 U. S. 311, 315, it was adjudged that a statute of Virginia defining the obligations of carriers who accepted for transportation anything directed to points of destination beyond the termini of their own lines or routes, was not, in its application to interstate business, a regulation of interstate commerce within the meaning of the Constitution. This court said: "Of course, in a latitudinarian sense any restriction as to the evidence of a contract, relating to interstate commerce, may be said to be a limitation on the contract itself. But this remote effect, resulting from the lawful exercise by a State of its power to determine the form in which contracts may be proven, does not amount to a regulation of interstate commerce." And the court cited in support of its conclusion the case of *Chicago, Milwaukee &c. Railway* v. *Solan*, 169 U. S. 133, 137, which involved the validity of state regulations as to the liability of carriers of passengers, and in which it was said: "They are not in themselves regulations of interstate commerce, although they control in some degree the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits."

Now, it is evident that these cases had no reference to the health, morals or safety of the people of the State, but only

to the public convenience. They recognized the fundamental principle that outside of the field directly occupied by the General Government under the powers granted to it by the Constitution, all questions arising within a State that relate to its internal order, or that involve the public convenience or the general good, are primarily for the determination of the State, and that its legislative enactments relating to those subjects, and which are not inconsistent with the state constitution, are to be respected and enforced in the courts of the Union if they do not by their operation directly entrench upon the authority of the United States or violate some right protected by the National Constitution. The power here referred to is — to use the words of Chief Justice Shaw — the power "to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same." *Commonwealth* v. *Alger*, 7 Cushing, 53, 85. Mr. Cooley well said: "It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies as carriers of persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and expedition." Cooley's Const. Lim. (6th ed.) p. 715. It may be that such legislation is not within the "police power" of a State, as those words have been sometimes, although inaccurately, used. But in our opinion the power, whether called police, governmental or legislative, exists in each State, by appropriate enactments not forbidden by its own constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and therefore to provide for the public convenience and the public good. This power in the States is entirely distinct from any power granted to the General Government, although when exercised it may sometimes reach subjects over which national legislation can be constitutionally extended. When Congress acts with ref-

erence to a matter confided to it by the Constitution, then its statutes displace all conflicting local regulations touching that matter, although such regulations may have been established in pursuance of a power not surrendered by the States to the General Government. *Gibbons* v. *Ogden*, 9 Wheat. 1, 210; *Sinnot* v. *Davenport*, 22 How. 227, 243; *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S. 613, 626.

It is not contended that the statute in question is repugnant to the Constitution of the United States when applied to railroad trains carrying passengers between points within the State of Ohio. But the contention is that to require railroad companies, even those organized under the laws of Ohio, to stop their trains or any of them carrying interstate passengers at a particular place or places in the State for a reasonable time, so directly affects commerce among the States as to bring the statute, whether Congress has acted or not on the same subject, into conflict with the grant in the Constitution of power to regulate such commerce. That such a regulation may be in itself reasonable and may promote the public convenience or subserve the general welfare is, according to the argument made before us, of no consequence whatever; for, it is said, a state regulation which *to any extent* or for a limited time only interrupts the absolute, continuous freedom of interstate commerce is forbidden by the Constitution, although Congress has not legislated upon the particular subject covered by the state enactment. If these broad propositions are approved, it will be difficult to sustain the numerous judgments of this court upholding local regulations which in some degree or only incidentally affected commerce among the States, but which were adjudged not to be in themselves regulations of interstate commerce, but within the police powers of the States and to be respected so long as Congress did not itself cover the subject by legislation. *Cooley* v. *Philadelphia*, 12 How. 299, 320; *Sherlock* v. *Alling*, 93 U. S. 99, 104; *Morgan* v. *Louisiana*, 118 U. S. 455, 463; *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, Chattanooga &c. Railway* v. *Alabama*, 128 U. S. 96, 100; *Hennington* v. *Georgia*, above cited; *Missouri, Kansas and Texas Railway* v. *Haber*, above cited; and *N. Y.*,

N. H. & Hartford Railroad v. *New York*, 165 U. S. 628, 631, 632, were all cases involving state regulations more or less affecting interstate or foreign commerce, but which were sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce; and having been enacted only to protect the public safety, the public health or the public morals, and having a real, substantial relation to the public ends intended to be accomplished thereby, were not to be deemed absolutely forbidden because of the mere grant of power to Congress to regulate interstate and foreign commerce, but to be regarded as only incidentally affecting such commerce and valid until superseded by legislation of Congress on the same subject.

In the case last cited — *N. Y., N. H. & Hartford Railroad* v. *New York* — the question was as to the validity, when applied to interstate railroad trains, of a statute of New York forbidding the heating of passenger cars in a particular mode. This court said: "According to numerous decisions of this court sustaining the validity of state regulations enacted under the police powers of the State, and which incidentally affected commerce among the States and with foreign nations, it was clearly competent for the State of New York, in the absence of national legislation covering the subject, to forbid under penalties the heating of passengers cars in that State by stoves or furnaces kept inside the cars or suspended therefrom, although such cars may be employed in interstate commerce. While the laws of the States must yield to acts of Congress passed in execution of the powers conferred upon it by the Constitution, *Gibbons* v. *Ogden*, 9 Wheat. 1, 211, the mere grant to Congress of the power to regulate commerce with foreign nations and among the States did not, of itself and without legislation by Congress, impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives and the safety of their people. The statute in question had for its object to protect all persons travelling in the State of New York on passenger cars moved by the agency of steam against the perils attending a particular mode of heating such cars.

. . . The statute in question is not directed against interstate commerce. Nor is it within the necessary meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits. Until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce with foreign nations and among the several States, the validity of the statute, so far as the commerce clause of the Constitution of the United States is concerned, cannot be questioned."

Consistently with these doctrines it cannot be adjudged that the Ohio statute is unconstitutional. The power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals or the public safety. Whether legislation of either kind is inconsistent with any power granted to the General Government is to be determined by the same rules.

In what has been said we have assumed that the statute is not in itself unreasonable; that is, it has appropriate relation to the public convenience, does not go beyond the necessities of the case, and is not directed against interstate commerce. In *Railroad Co.* v. *Husen*, 95 U. S. 465, 473, reference was made to some decisions of state courts in relation to statutes prohibiting the introduction into a State of cattle having infectious diseases, and in which it was contended that it was for the legislature and not for the courts to determine whether such legislation went beyond the danger to be apprehended and was therefore something more than the exertion of the police power. This court said that it could not concur in that view; that as the police power of a State cannot obstruct either foreign or interstate commerce "beyond the necessity for its exercise," it was the duty of the courts to guard vigilantly against "needless intrusion" upon the field

committed by the Constitution to Congress. As the cases above cited show, and as appears from other cases, the reasonableness or unreasonableness of a state enactment is always an element in the general inquiry by the court whether such legislation encroaches upon national authority, or is to be deemed a legitimate exertion of the power of the State to protect the public interests or promote the public convenience.

In our judgment the assumption that the statute of Ohio was not directed against interstate commerce but is a reasonable provision for the public convenience, is not unwarranted. The requirement that a railroad company whose road is operated within the State shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at any station, city or village of three thousand inhabitants for a time sufficient to receive and let off passengers, so far from being unreasonable, will greatly subserve the public convenience. The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo without stopping at intermediate points, or only at very large cities on the route, if in the contingency named in the statute the required number of trains stop at each place containing three thousand inhabitants long enough to receive and let off passengers. It seems from the evidence that the average time required to stop a train and receive and let off passengers is only three minutes. Certainly, the State of Ohio did not endow the plaintiff in error with the rights of a corporation for the purpose simply of subserving the convenience of passengers travelling through the State between points outside of its territory. "The question is no longer an open one," this court said in *Cherokee Nation* v. *Southern Kansas Railway*, 135 U. S. 641, 657, "as to whether a railroad is a public highway, established primarily for the convenience of the people, and to subserve public ends, and, therefore, subject to governmental control and regulation. It is because it is a public highway, and subject to such control, that the corporation by which it is constructed, and by which it is to be maintained, may be permitted, under legislative sanction, to appropriate property

for the purpose of a right of way, upon making just compensation to the owner, in the mode prescribed by law." In the construction and maintenance of such a highway under public sanction the corporation really performs a function of the State. *Smyth* v. *Ames*, 169 U. S. 466, 544. The plaintiff in error accepted its charter subject necessarily to the condition that it would conform to such reasonable regulations as the State might from time to time establish that were not in violation of the supreme law of the land. In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us was in itself a regulation of interstate commerce. It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and as far as practicable make such regulations as were just to all who might pass over the road in question. It was entitled of course to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places in the State to places beyond its limits, or the convenience of those outside of the State who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the State without stopping. Any other view of the relations between the State and the corporation created by it would mean that the directors of the corporation could manage its affairs solely with reference to the interests of stockholders and without taking into consideration the interests of the general public. It would mean not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, but that the corporation could so regulate the running of its interstate trains as to build up cities and towns at the ends of its line or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that beyond the power of the State to prevent it the defendant railway company could run all its trains

through the State without stopping at any city within its limits however numerous its population, and could prevent the people along its road within the State who desired to go beyond its limits from using its interstate trains at all, or only at such points as the company chose to designate. A principle that in its application admits of such results cannot be sanctioned.

We perceive in the legislation of Ohio no basis for the contention that the State has invaded the domain of national authority or impaired any right secured by the National Constitution. In the recent case of *Jones* v. *Brim*, 165 U. S. 180, 182, it was adjudged that, embraced within the police powers of a State was the establishment, maintenance and control of public highways, and that under such powers reasonable regulations incident to the right to establish and maintain such highways could be established by the State. And the State of Ohio by the statute in question has done nothing more than to so regulate the use of a public highway established and maintained under its authority as will reasonably promote the public convenience. It has not unreasonably obstructed the freedom of commerce among the States. Its regulations apply equally to domestic and interstate railroads. Its statute is not directed against interstate commerce, but only incidentally affects it. It has only forbidden one of its own corporations from discriminating unjustly against a large part of the public, for whose convenience that corporation was created and invested with authority to maintain a public highway within the limits of the State.

It has been suggested that the conclusion reached by us is not in accord with *Hall* v. *De Cuir*, 95 U. S. 485, 488; *Wabash, St. Louis & Pacific Railway* v. *Illinois*, 118 U. S. 556, and *Illinois Central Railroad Company* v. *Illinois*, 163 U. S. 142, 153, 154, in each of which cases certain state enactments were adjudged to be inconsistent with the grant of power to Congress to regulate commerce among the States.

In *Hall* v. *De Cuir* a statute of Louisiana relating to carriers of passengers within that State, and which prohibited any discrimination against passengers on account of race or color, was

held — looking at its necessary operation — to be a regulation of and a direct burden on commerce among the States, and therefore unconstitutional. The defendant, who was sued for damages on account of an alleged violation of that statute, was the master and owner of a steamboat enrolled and licensed under the laws of the United States for the coasting trade, and plying as a regular packet for the transportation of freight and passengers between New Orleans, Louisiana, and Vicksburg, Mississippi, touching at the intermediate landings both within and without Louisiana as occasion required. He insisted that it was void as to him because it directly regulated or burdened interstate business. The court distinctly recognized the principle upon which we proceed in the present case, that state legislation relating to commerce is not to be deemed a regulation of interstate commerce simply because it may to some extent or under some circumstances affect such commerce. But, speaking by Chief Justice Waite, it said: "We think it may be safely said that state legislation which seeks to impose a *direct* burden upon interstate commerce, or to interfere *directly* with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced. It was to meet just such a case that the commercial clause in the Constitution was adopted. The

river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. . . . No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in interstate commerce, it may be as well against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board, would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, 'exemplary as well as actual,' by any one who felt himself aggrieved because he had been excluded on account of his color." The import of that decision is that, in the absence of legislation by Congress, a state enactment may so directly and materially burden interstate commerce as to be in itself a regulation of such commerce. We cannot perceive that there is any conflict between the decision in that case and that now made. The Louisiana statute, as interpreted by the court, embraced every passenger carrier coming into the State. The Ohio statute does not interfere at all with the management of the defendant's trains outside of the State, nor does it apply to all its trains coming into the State. It relates only to the stopping of a given number of its trains within the State at certain points, and then only long enough to receive and let off passengers. It so manifestly subserves the public convenience, and is in itself so just and reasonable, as wholly to preclude the idea that it was, as the Louisiana statute was declared to be, a direct burden upon interstate commerce, or a direct interference with its freedom.

The judgment in *Wabash, St. Louis & Pacific Railway* v. *Illinois* is entirely consistent with the views herein expressed.

A statute of Illinois was construed by the Supreme Court of that State as prescribing rates not simply for railroad transportation beginning and ending within Illinois, but for transportation between points in Illinois and points in other States under contracts for continuous service covering the entire route through several States. Referring to the principle contained in the statute, this court held that if restricted to transportation beginning and ending within the limits of the State it might be very just and equitable, but that it could not be applied to transportation through an entire series of States without imposing a direct burden upon interstate commerce forbidden by the Constitution. In the case before us there is no attempt upon the part of Ohio to regulate the movement of the defendant company's interstate trains throughout the whole route traversed by them. It applies only to the movement of trains while within the State, and to the extent simply of requiring a given number, if so many are daily run, to stop at certain places long enough to receive and let off passengers.

Nor is *Illinois Central Railroad* v. *Illinois* inconsistent with the views we have expressed. In that case a statute of Illinois was held, in certain particulars, to be unconstitutional, (although the legislation of Congress did not cover the subject,) as directly and unnecessarily burdening interstate commerce. The court said: "The effect of the statute of Illinois, as construed and applied by the Supreme Court of the State, is to require a fast mail train, carrying interstate passengers and the United States mail, from Chicago in the State of Illinois to places south of the Ohio River, over an interstate highway established by authority of Congress, to delay the transportation of such passengers and mails, by turning aside from the direct interstate route, and running to a station three miles and a half away from a point on that route, and back again to the same point, and thus travelling seven miles which form no part of its course, before proceeding on its way; and to do this for the purpose of discharging and receiving passengers at that station, for the interstate travel to and from which, it is admitted in this case, the railway company fur-

nishes other and ample accommodation. This court is unanimously of opinion that this requirement is an unconstitutional hindrance and obstruction of interstate commerce, and of the passage of the mails of the United States." Again: "It may well be, as held by the courts of Illinois, that the arrangement made by the company with the Post Office Department of the United States cannot have the effect of abrogating a reasonable police regulation of the State. But a statute of the State, which unnecessarily interferes with the speedy and uninterrupted carriage of the mails of the United States, cannot be considered as a reasonable police regulation." The statute before us does not require the defendant company to turn any of its train from their direct interstate route. Besides, it is clear that the particular question now presented was not involved in *Illinois Central Railroad* v. *Illinois;* for it is stated in the court's opinion that "the question whether a statute which merely required interstate railroad trains, without going out of their course, to stop at county seats, would be within the constitutional power of the State, is not presented, and cannot be decided, upon this record." The above extracts show the full scope of that decision. Any doubt upon the point is removed by the reference made to that case in *Gladson* v. *Minnesota*, 166 U. S. 427, 431.

It has been suggested also that the statute of Ohio is inconsistent with section 5258 of the Revised Statutes of the United States authorizing every railroad company in the United States operated by steam, its successors and assigns, "to carry upon and over its road, boats, bridges and ferries all passengers, troops, government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination." In *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S. 613, 638, above cited, it was held that the authority given by that statute to railroad companies to carry "freight and property" over their respective roads from one State to another State, did not authorize a railroad company to carry into a State

cattle known, or which by due diligence might be known, to be in such condition as to impart or communicate disease to the domestic cattle of such State; and that a statute of Kansas prescribing as a rule of civil conduct that a person or corporation should not bring into that State cattle known, or which by proper diligence could be known, to be capable of communicating disease to domestic cattle, could not be regarded as beyond the necessities of the case, nor as interfering with any right intended to be given or recognized by section 5258 of the Revised Statutes. And we adjudge that the above statutory provision was not intended to interfere with the authority of a State to enact such regulations, with respect at least to a railroad corporation of its own creation, as were not directed against interstate commerce, but which only incidentally or remotely affected such commerce, and were not in themselves regulations of interstate commerce, but were designed reasonably to subserve the convenience of the public.

Imaginary cases are put for the purpose of showing what might be done by the State that would seriously interfere with or discriminate against interstate commerce, if the statute in question be upheld as consistent with the Constitution of the United States. Without stopping to consider whether the illustrations referred to are apposite to the present inquiry, it is sufficient to say that it is always easy to suggest extreme cases for the application of any principle embodied in a judicial opinion. Our present judgment has reference only to the case before us, and when other cases arise in which local statutes are alleged not to be legitimate exertions of the police powers of the State, but to infringe upon national authority, it can then be determined whether they are to be controlled by the decision now rendered. It would be impracticable, as well as unwise, to attempt to lay down any rule that would govern every conceivable case that might be suggested by ingenious minds.

For the reasons stated the judgment of the Supreme Court of Ohio is

Affirmed.

Dissenting Opinion: Shiras, Brewer, Peckham, JJ.

MR. JUSTICE SHIRAS, with whom concurred MR. JUSTICE BREWER and MR. JUSTICE PECKHAM, dissenting.

The Constitution of the United States, in its eighth section, confers upon Congress the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, and to establish post offices and post roads.

In pursuance of this power, Congress, on June 15, 1866, enacted that "every railroad company in the United States, whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges and ferries, all passengers, troops, government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination." Rev. Stat. § 5258.

By the act of February 4, 1887, c. 104, entitled "An act to regulate commerce," 24 Stat. 379, Congress created the Interstate Commerce Commission, and enacted that the provisions of that act should "apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States . . . ;" and that it should be unlawful for any common carrier, subject to the provisions of the act, to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination.

It was said by this court, in *California* v. *Central Pacific Railroad*, 127 U. S. 1, 39, that "It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for

postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent — the Cumberland or National road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed, and led to the conclusion that Congress has plenary power over the whole subject. Of course, the authority of Congress over the Territories of the United States, and its power to grant franchises exercisable therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of state as well as Federal corporations."

In the case of *Cincinnati, New Orleans and Texas Pacific Railway* v. *Interstate Commerce Commission*, 162 U. S. 184, the validity of the act of February 4, 1887, was sustained, and its provisions were held applicable even to a railroad company whose entire road was within the limits of the State of its creation, when, by agreeing to receive goods by virtue of foreign through bills of lading and to participate in through rates and charges, it became part of a continuous line of transportation.

By an act approved February 23, 1869, the State of Louisiana forbade common carriers of passengers to make dis-

crimination on account of race or color. A person of color took passage upon a steamboat plying between New Orleans and Vicksburg, in the State of Mississippi, and was carried from New Orleans to her place of destination within Louisiana, and being refused accommodations, on account of her color, in the cabin specially set apart for white persons, brought an action in the district court for the parish of New Orleans, under the provisions of the act above referred to. By way of defence it was insisted that the statute was void, in respect to the matter complained of, because, as to the business of the steamboat, it was an attempt to regulate commerce between the States, and therefore in conflict with the Constitution of the United States. The state court held that the statute was valid, and the case was brought to this court, where the judgment of the state court was reversed. *Hall* v. *De Cuir*, 95 U. S. 485, 488. The reasoning of the court is so closely applicable to the case before us that we quote a considerable part of the opinion:

"We think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced.

"It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardships. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in interstate commerce, it may as well be against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board, would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, exemplary as well as actual, by any one who felt himself aggrieved because he had been excluded on account of his color.

"This power of regulation may be exercised without legislation as well as with it. By refraining from action, Congress, in effect, adopts as its own regulations those which the common law, or the civil law where that prevails, has provided

for the government of each business, and those which the States, in the regulation of their domestic concerns, have established affecting commerce, but not regulating it within the meaning of the Constitution. In fact, congressional legislation is only necessary to cure defects in existing laws, as they are discovered, and to adapt such laws to new developments of trade. As was said by Mr. Justice Field, speaking for the court in *Welton* v. *Missouri*, 91 U. S. 275, 282: 'Inaction [by Congress] is equivalent to a declaration that interstate commerce shall remain free and untrammelled.' Applying that principle to the circumstances of this case, congressional inaction left Benson [the captain of the steamboat] at liberty to adopt such reasonable rules and regulations for the disposition of passengers upon his boat, while pursuing her voyage within Louisiana or without, as seemed to him most for the interest of all concerned. The statute under which this suit is brought, as construed by the state court, seeks to take away from him that power so long as he is within Louisiana; and while recognizing to the fullest extent the principle which sustains a statute, unless its unconstitutionality is clearly established, we think this statute, to the extent that it requires those engaged in the transportation of passengers among the States to carry colored passengers in Louisiana in the same cabin with whites, is unconstitutional and void. If the public good requires such legislation, it must come from Congress and not from the States."

I am not able to think that this decision is satisfactorily disposed of, in the principal opinion, by citing it, and then dismissing it with the observation that it is not perceived that there is any conflict between it and that now made.

The State of Illinois enacted that if any railroad corporation shall charge, collect or receive for the transportation of any passenger or freight of any description upon its railroad, *for any distance within the State*, the same or a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger or like quantity of freight, of the same class over a greater distance of the same road, all

such discriminating rates, charges, collections or receipts, whether made directly or by the means of rebate, drawback or other shift or evasion, shall be deemed and taken against any such railroad company as *prima facie* evidence of unjust discrimination prohibited by the provisions of the act. The act further provided a penalty of not over $5000, and also that the party aggrieved should have a right to recover three times the amount of damages sustained, with costs and attorneys' fees. Rev. Stat. Ill. c. 114, § 126.

An action to recover penalties under this statute was brought by Illinois against the Wabash, St. Louis and Pacific Railway Company, an Illinois corporation, in which the allegations were that the railroad company had charged Elder & McKinney for transporting goods from Peoria, in the State of Illinois, to New York City, at the rate of fifteen cents per hundred pounds for a carload; that on the same day the railroad company had charged one Bailey, for transporting similar goods from Gilman to New York City, at the rate of twenty-five cents per hundred pounds per carload; that the carload for Elder & McKinney was carried eighty-six miles farther in the State of Illinois than the other carload of the same weight; that this freight being of the same class in both instances, and over the same road, except as to the difference in the distance, made a discrimination forbidden by the statute, whether the charge was regarded for the whole distance from the terminal point in Illinois to New York City, or the proportionate charge for the haul within the State of Illinois. Judgment went against the company in the courts of the State of Illinois, and the case was brought to this court.

It was here strenuously contended that, in the absence of congressional legislation, a state legislature has the power to regulate the charges made by the railroads of the State for transporting goods and passengers to and from places within the State, when such goods and passengers are brought from, or carried to, points without the State, and are, therefore, in the course of transportation from any State, or to another State. And of that view were several Justices of this court, who, in the opinion filed on their behalf, cited the very cases

that are cited and relied on in the majority opinion in the present case.

But the court did not so hold, *Wabash, St. Louis & Pacific Railway* v. *Illinois*, 118 U. S. 557, 572; and its reasoning is so plainly applicable to the question now before us, it may well be quoted at some length.

After having reviewed some of the previous cases, and having quoted those passages in the opinion of the court in *Hall* v. *De Cuir*, 95 U. S. 485, which have hereinbefore been quoted, Mr. Justice Miller, giving the opinion of the court, proceeded as follows:

"The applicability of this language to the case now under consideration, of a continuous transportation of goods from New York to Central Illinois, or from the latter to New York, is obvious, and it is not easy to see how any distinction can be made. Whatever may be the instrumentalities by which this transportation from the one point to the other is effected, it is but one voyage, as much so as that of the steamboat on the Mississippi River. It is not the railroads themselves that are regulated by this act of the Illinois legislature so much as the charge for transportation, and, in the language just cited, if each one of the States through whose territories these goods are transported can fix its own rules for prices, for modes of transit, for terms and modes of delivery, and all the other incidents of transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of interstate commerce, might be too oppressive to be submitted to. 'It was,' in the language of the court cited above, 'to meet just such a case that the commerce clause of the Constitution was adopted.'

"It cannot be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it, that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the

subjects which prompted the formation of the Constitution. *Cook* v. *Pennsylvania*, 97 U. S. 566, 574; *Brown* v. *Maryland*, 12 Wheat. 419, 446. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce.

"The argument on this subject can never be better stated than it is by Chief Justice Marshall in *Gibbons* v. *Ogden*, 9 Wheat. 1, 195–6. He there demonstrates that commerce among the States, like commerce with foreign nations, is necessarily a commerce which crosses state lines, and extends into the States, and the power of Congress to regulate it exists wherever that commerce is found. Speaking of navigation as an element of commerce, which it is, only, as a means of transportation, now largely superseded by railroads, he says: 'The power of Congress, then, comprehends navigation within the limits of every State in the Union, so far as that navigation may be, in any manner, "connected with commerce with foreign nations, or among the several States, or with the Indian tribes." It may, of consequence, pass the jurisdictional line of New York and act upon the very waters, [the Hudson River,] to which the prohibition now under consideration applies.' So the same power may pass the line of the State of Illinois and act upon its restriction upon the right of transportation extending over several States including that one.

"In the case of *Telegraph Co.* v. *Texas*, 105 U. S. 460, 465, the court held that 'a telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods,' and that both companies are instruments of commerce, and their business is commerce itself. . . . In the case of *Welton* v. *Missouri*, 91 U. S.

275, 280, it was said: 'It will not be denied that that portion of commerce with foreign nations and between the States which consists in the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating state legislation.' And in *County of Mobile* v. *Kimball*, 102 U. S. 671, 702, the same idea is very clearly stated in the following language: 'Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce, as thus defined, there can be only one system of rules, applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as thus defined may not be inaccurate, when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce.' . . . We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court, that the statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law.

"Let us see precisely what is the degree of interference with the transportation of property or persons from one State to another which this statute proposes. A citizen of New York has goods which he desires to have transported by the railroad companies from that city to the interior of the State of Illinois. A continuous line of rail over which a car loaded with these goods can be carried, and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of this route from whence the goods are to start, and he is told by the carrier, 'I am free to make a fair

and reasonable contract for this carriage to the line of the State of Illinois, but when the car which carries these goods is to cross the line of that State, pursuing at the same this continuous track, I am met by a law of Illinois which forbids me to make a free contract concerning this transportation within that State, and subjects me to certain rules by which I am to be governed as to the charges which the same railroad company in Illinois may make, or has made, with reference to other persons and other places of delivery.' So that while that carrier might be willing to carry these goods from the city of New York to the city of Peoria at the rate of fifteen cents per hundred pounds, he is not permitted to do so because the Illinois railroad company has already charged at the rate of twenty-five cents per hundred pounds for carriage to Gilman, in Illinois, which is eighty-six miles shorter than the distance to Peoria.

"So also, in the present case, the owner of corn, the principal product of the country, desiring to transport it from Peoria, in Illinois, to New York, finds a railroad company willing to do this at the rate of fifteen cents per hundred pounds for a carload, but he is compelled to pay at the rate of twenty-five cents per hundred pounds, because the railroad company has received from a person residing at Gilman twenty-five cents per hundred pounds for the transportation of a carload of the same class of freight over the same line of road from Gilman to New York. This is the result of the statute of Illinois, in its endeavor to prevent unjust discrimination, as construed by the Supreme Court of that State. The effect of it is, that whatever may be the rate of transportation per mile charged by the railroad company from Gilman to Sheldon, a distance of twenty-three miles, in which the loading and unloading of the freight is the largest expense incurred by the railroad company, the same rate per mile must be charged from Peoria to the city of New York.

"The obvious injustice of such a rule as this, which railroad companies are by heavy penalties compelled to conform to, in regard to commerce among the States, when applied to transportation which includes Illinois in a long line of carriage

through several States, shows the value of the constitutional provision which confides the power of regulating interstate commerce to the Congress of the United States, whose enlarged view of the interests of all the States, and of the railroads concerned, better fits it to establish just and equitable rates.

"Of the justice or propriety of the principle which lies at the foundation of the Illinois statute, it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the State, it may be very just and equitable, and it certainly is the province of the state legislature to determine that question. But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois court concedes it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution."

This case, so recent and so elaborately considered, has not received adequate attention in the opinion of the court in the present case.

The legislature of Illinois, by the statute of February 10, 1851, incorporated the Illinois Central Railroad Company, and empowered it to construct and maintain a railroad, with one or more tracks, from the southern terminus of the Illinois and Michigan Canal to a point at the city of Cairo, with the same to the city of Chicago on Lake Michigan, and also a branch

via the city of Galena to a point on the Mississippi River opposite the town of Dubuque, in the State of Iowa. The Chicago, St. Louis and New Orleans Railroad Company, a consolidated company formed under the legislatures of the States of Louisiana, Mississippi, Tennessee and Kentucky, whose line extended from New Orleans to the Ohio River, built a railroad bridge across the Ohio River to low-water mark on the Illinois side, to which the jurisdiction of the State of Kentucky extended. The north end of this bridge was at a part of Cairo about two miles north of the station of the Illinois Central Railroad Company in that city; and the peculiar conformation of the land and water made it impracticable to put the bridge nearer the junction of the Ohio and Mississippi rivers. By this bridge the road of the Illinois Central Railroad Company was thereby connected with that of the Chicago, St. Louis and New Orleans Railroad Company. Thereafter the Illinois Central Railroad Company put on a daily fast mail train, to run from Chicago to New Orleans, carrying passengers as well as the United States mail, not going to or stopping at its station in Cairo, but local trains adequate to afford accommodations for passengers to or from Cairo were run daily on that part of the railroad between the Bridge Junction and Cairo. By a subsequent act of 1889 it was enacted by the legislature of Illinois that "every railroad corporation shall cause its passenger trains to stop upon its arrival at each station, advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: *Provided*, All regular passenger trains shall stop a sufficient length of time, at the railroad station of county seats, to receive and let off passengers with safety."

In April, 1891, a petition was filed in the Circuit Court for Alexander County, in the State of Illinois, by the county attorney in behalf of the State, alleging that the Illinois Central Railroad Company ran its southbound fast mail train through the city of Cairo, two miles north of its station in that city, and over a bridge across the Ohio River, connecting its road with other roads south of that river, without stopping

at its station in Cairo, and praying for a writ of mandamus to compel it to cause all its passenger trains, coming into Cairo, to be brought down to that station, and there stopped a sufficient length of time to receive and let off passengers with safety.

The railroad company contended that the statute did not require its fast mail train to be run to and stopped at its station in Cairo, and that the statute was contrary to the Constitution of the United States, as interfering with interstate commerce, and with the carrying of the United States mail. The court granted the writ of mandamus, and the railroad company appealed to the Supreme Court of the State, which affirmed the judgment, and held that the statute of Illinois concerning the stoppage of trains obliged the defendant to cause its fast mail train to be taken into its station at Cairo, and be stopped there long enough to receive and let off passengers with safety, and that the statute, so construed, was not an unconstitutional interference with interstate commerce, or with the carrying of the United States mails. The case was brought to this court, where the judgment of the Supreme Court of Illinois was reversed in a unanimous opinion delivered by Mr. Justice Gray. *Illinois Central Railroad* v. *Illinois*, 163 U. S. 142, 153. After reciting several statutes of Illinois and of Congress, particularly the act of June 15, 1866, wherein Congress, for the declared purpose of facilitating commerce among the several States, and the postal and military communications of the United States, authorized every railroad company in the United States, whose road was operated by steam, to carry over its road, bridges and ferries, as well passengers and freight, as government mails, troops and supplies, from one State to another, and to connect, in any State authorizing it to do so, with roads of other States, so as to form a continuous line of transportation, the court proceeded to say:

"The effect of the statute of Illinois, as construed and applied by the Supreme Court of the State, is to require a fast mail train, carrying interstate passengers and the United States mails, from Chicago, in the State of Illinois, to places south of the Ohio River, over an interstate highway established

by authority of Congress, to delay the transportation of such passengers and mail, by turning aside from the direct interstate route, and running to a station three miles and a half away from a point on that route, and back again to the same point, and thus travelling seven miles which form no part of its course, before proceeding on its way; and to do this for the purpose of discharging and receiving passengers at that station, for the interstate travel to and from which, as is admitted in this case, the railroad company furnishes other and ample accommodation. This court is unanimously of opinion that this requirement is an unconstitutional hindrance and obstruction of interstate commerce, and of the passage of the mails of the United States. Upon the state of facts presented by this record, the duties of the Illinois Central Railroad Company were not confined to those which it owed to the State of Illinois under the charter of the company and other laws of the State; but included distinct duties imposed upon the corporation by the Constitution and laws of the United States.

"The State may doubtless compel the railroad company to perform the duty imposed by its charter of carrying passengers and goods between its termini within the State. But so long, at least, as that duty is adequately performed by the company, the State cannot, under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States.

"The State may make reasonable regulations to secure the safety of passengers, even on interstate trains, while within its borders. But the State can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic."

Beyond the bare allegation that the case of *Illinois Central Railroad* v. *Illinois* is not inconsistent with the views expressed in the present case, no attempt is made to compare or reconcile the principles involved in the two cases. It is, indeed, said that the Ohio statute "does not require the defendant company to turn any of its trains from their direct interstate route;" and the remark of the court in the *Illinois case* is

cited, in which it was said "the question whether a statute which merely required interstate railroad trains, without going out of their course, to stop at county seats, would be within the constitutional power of the State, is not presented, and cannot be decided, upon this record." Reference is also made to the case of *Gladson* v. *Minnesota*, 166 U. S. 427, as removing any doubt as to the scope of the decision in the *Illinois case.*

But an examination of that case will show that no question was presented or decided as to the power of a State to compel interstate railroad trains to stop at all county seats through which they might pass. On the contrary, the court was careful to say, distinguishing it from the *Illinois case:* "But, in the case at bar, the train in question ran wholly within the State of Minnesota, and could have stopped at the county seat of Pine County without deviating from its course;" and to point out that the statute of Minnesota expressly provided that "*this act shall not apply to through railroad trains entering this State from any other State, or to transcontinental trains of any railroad.*"

On what then does the court's opinion rely to distinguish the *Illinois case* from the present case? Merely that the through train in the one case was obliged to go out of its direct route some three or four miles, while in the other the obligation is to stop at towns through which the trains pass. But what was the *reason* why this court held that the Illinois statute was void as an interference with interstate commerce? Was not the *delay* thus caused the sole reason? And is there any difference between a delay caused by having to go a few miles out of a direct course in a single instance, and one caused by having to stop at a number of unimportant towns? Probably the excursion to the Cairo station did not detain the Illinois train more than half an hour; and it is admitted in the present case that the number of villages in Ohio through which the trains passed were thirteen, and that the average time required to stop a train of cars and receive and leave off passengers would be three minutes at each station, to say nothing of the time expended in losing and in regaining headway. Besides the delays thus caused, there would be many

inconveniences to the railroad companies and to the travelling public occasioned by interfering with regulations made for the comfort and safety of through passengers.

Western Union Telegraph Co. v. *James*, 162 U. S. 650, is cited by the court as sustaining its present position. But that was a case in which the legislation of the State was of a nature that was in aid of the performance of the duty of the company that would exist in the absence of any such statute, and was in nowise obstructive of its duty as a telegraph company, and the decision of this court was expressly put upon that ground. It was pointed out, in the opinion, that the legislation in question could in no way affect the conduct of the company with regard to the performance of its duties in other States, and that such important particular distinguished the case from *Hall* v. *De Cuir*, 95 U. S. 485, and from *Western Union Telegraph Co.* v. *Pendleton*, 122 U. S. 347.

Richmond & Alleghany Railroad v. *Patterson Tobacco Co.*, 169 U. S. 311, is cited as adjudging that a statute of Virginia, defining the obligations of carriers who accept for transportation anything directed to points of destination beyond the termini of their own lines or routes, was not, in its application to interstate business, a regulation of interstate commerce within the meaning of the Constitution. But the holding in that case simply was that the statute in question did not attempt to substantially regulate or control interstate shipments, but merely established a rule of evidence, ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own line, nevertheless by agreement its liability was limited to its own line — that the lawful exercise by a State of its power to determine the form in which contracts may be proven does not amount to a regulation of interstate commerce. The reasoning of the court went upon the assumption that if the statute was not merely a rule of evidence, but an attempt to regulate interstate commerce, it would have been void.

Reference is also made, in the principal opinion, to *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S. 613. There an attack was made on the validity of legislation of the State

of Kansas, subjecting any person or persons who should bring into that State any cattle liable or capable of communicating "Texas or splenetic fever" to any domestic cattle of Kansas to a civil action for damages. In such an action it was contended, on behalf of the defendant, that the Kansas statutes were an interference with the freedom of interstate commerce, and also covered a field of action actually occupied by Congressional legislation, known as the Animal Industry Act. But it appeared that the Kansas act, under which the action was brought, was passed in 1885 and amended in 1891, and that Congress had previously invited the authorities of the States and Territories concerned to coöperate for the extinction of contagious or communicable cattle diseases. Act of May 29, 1884, c. 60, 23 Stat. 31. And accordingly a majority of this court held that the statutory provisions of Kansas were not inconsistent with the execution of the act of Congress, but constituted an exercise of the coöperation desired. Otherwise the case would have fallen within the ruling in *Railroad Co.* v. *Husen*, 95 U. S. 465, where a similar statute of the State of Missouri, passed before the legislation by Congress, and prohibiting the bringing of Texas cattle into the State of Missouri between certain times fixed by the statute, was held to be in conflict with the commerce clause of the Constitution, and not a legitimate exercise of the police power of the State.

The case of *Hennington* v. *Georgia*, 163 U. S. 299, demands notice. In it was involved the validity of what is known as the Sunday law of Georgia. That statute forbade the running in Georgia of railroad freight trains on the Sabbath day. The Supreme Court of Georgia held the statute to be a regulation of internal police and not of commerce, and that it was not in conflict with the Constitution of the United States even as to freight trains passing through the State from and to adjacent States, and laden exclusively with freight received on board before the trains entered Georgia and consigned to points beyond its limits.

It was shown, in that case, that it had been the policy of Georgia, from the earliest period of its history, to forbid all persons, under penalties, from using the Sabbath as a day of

labor and for pursuing their ordinary callings, and that the legislation in question was enacted in the exercise of that policy. It was said in the opinion of the Supreme Court of Georgia, which was brought to this court for review, that "with respect to the selection of the particular day in each week which has been set apart by our statute as the rest day of the people, religious views and feelings may have had a controlling influence. We doubt not that they did have; and it is notable that the same views and feelings had a very powerful influence in dictating the policy of setting apart any day whatever as a day of enforced rest." And it was said in the opinion of this court that "in our opinion there is nothing in the legislation in question which suggests that it was enacted with the purpose to regulate interstate commerce, or with any other purpose than to prescribe a rule of civil duty for all who, on the Sabbath day, are within the territorial jurisdiction of the State."

If, as has often been said, Christianity is part of the common law of the several States, and if the United States, in their legislative and executive departments throughout the country, since the foundation of the government, have recognized Sunday as a day of rest and freedom from compulsory labor, then such a law as that of Georgia, being based upon a public policy common to all the States, might be sustained.

But, if put upon the ground now declared in the opinion of the court in the present case, namely, as an exercise of the police power of the State, and, as such, paramount to the control of Congress in administering the commerce clause of the Constitution, then it is apparent, as I think, that the decision in *Hennington* v. *Georgia* was wrong, and the judges dissenting in that case were right.

For if, as a mere matter of local policy, one State may forbid interstate trains from running on the Christian Sabbath, an adjoining State may select the Jewish or Seventh Day Sabbath as the day exempt from business. Another State may choose to consecrate another day of the week in commemoration of the Latter Day Saint and Prophet who founded such State, as the proper day for cessation from daily labor.

Or, what is more probable, one or more of the States may think fit to declare that one day in seven is not a sufficient portion of the time that should be exempted from labor, and establish two or more days of rest. The destructive effect of such inconsistent and diverse legislation upon interstate commerce, carried on in trains running throughout the entire country, is too obvious to require statement or illustration.

But whatever may be said of the decision in *Hennington* v. *Georgia*, it is, as I think, quite apparent that the Ohio legislation, now under consideration, cannot be reconciled with the principles and conclusions of the other cases cited.

The principal facts of this case, as found by the trial court, were: "That the defendant company is a corporation organized under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, and that its railroad is operated from Chicago to Buffalo; that said defendant was on and prior to October 9, 1890, and has been ever since, engaged in carrying passengers and freight over said railroad, through and into each of said several States, and is and was then engaged in the business of interstate commerce, both in the carriage of passengers and freight from, into and through said States; that said defendant did not on said 9th day of October, 1890, nor shortly prior thereto, or since, up to the time of the commencement of this suit, run daily, both ways or either way, over said road through the village of West Cleveland, three regular trains nor more than one regular train each, carrying passengers, which were not engaged in interstate commerce, and that did not have upon them passengers who had paid through fare, and were entitled to ride on said trains going in the one direction from the city of Chicago to the city of Buffalo, and those going in the other direction from the city of Buffalo through said States to the city of Chicago; that on or about the said day the defendant operated but one regular train carrying passengers each way, that was not engaged in carrying such through passengers; and said train did stop at West Cleveland, on the day aforesaid, for a time sufficient to receive and let off passengers; that the through trains that passed through West Cleveland

on the said day were train No. 1, limited express, with two express cars, one coach and three sleepers, from New York to Chicago; train No. 11, fast mail, with five United States mail cars, one coach and sleeper, from New York to Chicago; train No. 21 had one United States mail car, two baggage and express cars, four coaches and one sleeper, from Cleveland to Chicago — these were western trains; that the eastern trains were limited express No. 4, with one baggage and express car and three sleepers from Chicago to New York; train No. 6, with one baggage and express car, three coaches and two sleepers, from Chicago to New York; train No. 24, with one United States mail, two baggage and express cars and seven coaches, from Chicago to Buffalo; train No. 14, with three United States mail cars and one sleeper, from Chicago to New York. That the average time of delay necessarily required to stop a train of cars and sufficient time to receive and let off passengers would be three minutes; and that the number of cities and villages in the State of Ohio, containing three thousand inhabitants each, through which the aforesaid trains of the defendant passed on said day, were thirteen."

It is, therefore, a conceded fact in the case that the through trains, which the legislature of Ohio seeks to compel to stop at prescribed villages and towns in that State, are engaged in carrying on interstate commerce by the transportation of freight and passengers. It is obvious, further, that such trains are within section 5258 of the Revised Statutes of the United States, authorizing such railroad companies "to carry upon and over its road, boats, bridges and ferries, all passengers, troops, government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination."

It is also plain that the defendant railroad company and such of its trains as were engaged in interstate commerce are within the scope and subject to the regulations contained in the "act to regulate commerce," approved February 4, 1887, creating the Interstate Commerce Commission.

The theory on which passenger trains to traverse several States, or the entire continent, is prepared, is necessarily and widely different from that followed in making up ordinary trains to do a wayside business. There must be provision for sleeping at night, and for furnishing meals. In order that each and every passenger may receive the accommodation for which he pays, the seats are sold in advance, and with reference to the number of through passengers. To enable such trains to maintain the speed demanded, the number of the cars for each train must be limited, and they are advertised and known as "limited" trains. A traveller purchasing tickets on such trains has a right to expect that he will be carried to his journey's end in the shortest possible time, consistent with safety. The railroad companies compete for business by holding out that they run the fastest trains and those most certain to arrive on time. A company which, by its own regulations or under coercion of a state legislature, stopped its through trains at every village, would soon lose its through business, to the loss of the company and the detriment of the travelling public.

Nor must the necessity of the speedy transit of the United States mails be overlooked. The Government has not thought fit to build and operate railroads over which to transport its mails, but relies upon the use of roads owned by state corporations operating connecting roads. And it appears, from the findings in this case, that the defendant's through trains are engaged by the Government in the transportation of its mails. The business, public and private, that depends on hourly and daily communication by mail is enormous, and it would be intolerable if such necessary rapidity of intercourse could be controlled and trammelled by legislation like that in question.

It was pointed out in *Hall* v. *De Cuir* that, although the statute of Louisiana, which sought to regulate the manner in which white and colored passengers should be carried, was restricted by its own terms to the limits of the State, yet that such regulation necessarily affected steamboats running through and beyond the State, because such regulations might change at every state line.

A similar but much greater inconvenience would be occasioned by attempting by state legislation to interfere with the movements of through trains. If, for instance, and as is often the case, the through trains were full of through passengers, there would be no advantage to local travel for them to stop at the way stations, for there would be no room or accommodation for the occasional passengers. Nor would that difficulty be obviated by attaching to each train coaches for use at the way stations. Such additional coaches would impede the speed of the through trains, and interfere with the business of the local trains.

In *Wabash Railway Company* v. *Illinois*, it was said, replying to the argument that the state statute applied in terms only to transportation within the State: "Whatever may be the instrumentalities by which this transportation from the one point to the other is effected, it is but one voyage, as much so as that of the steamboat on the Mississippi River. It is not the railroads themselves that are regulated by this act of the Illinois legislature so much as the charge for transportation, and if each one of the States through whose territories these goods are transported can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of interstate commerce, might be too oppressive to be submitted to. . . . As restricted to a transportation which begins and ends within the limits of the State, it, the regulation, may be very just and equitable, and it certainly is the province of the state legislature to determine that question. But when it is attempted to apply to transportation through an entire series a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in freights, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated."

In *Illinois Central Railroad* v. *Illinois*, stress was justly

laid on the manifest purpose of Congress to establish a railroad in the centre of the continent, connecting the waters of the Great Lakes with those of the Gulf of Mexico, for the benefit of interstate commerce, as well as of the military and postal departments of the government.

A similar purpose has been manifested by Congress, in the legislation hereinbefore referred to, by authorizing the formation of continuous lines of transportation, by creating a permanent commission to supervise the transactions of railroad companies so far as they affect interstate commerce, and by employing such continuous and connecting roads for the transportation of its mails, troops and supplies.

These views by no means result in justifying the railroad company defendant in failing to supply the towns and villages through which it passes with trains adequate and proper to transact local business. Such failure is not alleged in this case, nor found to be a fact by the trial court. And if the fact were otherwise, the remedy must be found in suitable legislation or legal proceedings, not in an enactment to convert through into local trains.

Some observations may be ventured on the reasoning employed in the opinion of the court. It is said:

"In what has been said we have assumed that the statute is not in itself *unreasonable*. In our judgment this assumption is not unwarranted. The requirement that a railroad company whose road is operated within the State shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at any station, city or village, of three thousand inhabitants, for a time sufficient to receive and let off passengers, so far from being *unreasonable*, will subserve the public convenience."

But the question of the *reasonableness* of a public statute is never open to the courts. It was not open even to the Supreme Court of the State of Ohio to say whether the act in question was reasonable or otherwise. Much less does the power of the legislature of Ohio to pass an act regulating a railroad corporation depend upon the judgment or opinion of *this* court as to the reasonableness of such an act.

And again: "It was for the State of Ohio to take into consideration all the circumstances affecting passenger travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was not bound to ignore the convenience of its own people, whether travelling on this road from one point to another within the State, or from places in the State to places beyond its limits, or the convenience of those outside the State who wish to come into it, and look only to the convenience of those who desired to pass through the State without stopping."

It was, I respectfully submit, just such action on the part of the State of Ohio, and just such reasoning made to support that action, that are forbidden by the Constitution of the United States and by the decisions of this court, hereinbefore cited. If each and every State, through which these interstate highways run, could take into consideration all the circumstances affecting passenger travel within its limits, and make such regulations as, in the opinion of its legislature, are "*just and for the convenience of its own people*," then we should have restored the confusion that existed in commercial transactions before the adoption of the Constitution, and thus would be overruled those numerous decisions of this court, nullifying state legislation proceeding on such propositions.

Again it is said:

"Any other view of the relations between the State and the corporation created by it would mean that the directors of the corporation could manage its affairs solely with reference to the interests of stockholders, and without taking into consideration the interests of the general public. It would mean not only that such directors were the exclusive directors of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, but that the corporation, by reason of being engaged in interstate commerce, could build up cities and towns at the ends of its line, or at favored points, and by that means destroy or retard the growth and prosperity of intervening points. It would mean that the defendant railway company could, beyond the

power of the State to prevent it, run all of its trains through the State without stopping at any city within its limits, however numerous the population of such cities."

I am unable to perceive, in the views that prevailed in the *Louisiana* and *Illinois cases*, any foundation whatever, for such observations. In those cases it was expressly conceded that, in the regulation of commerce within the State and in respect to the management of trains so engaged, the authority of the state legislature is supreme. And, in the argument in behalf of the defendant company in this case, a similar admission is made.

It is fallacious, as I think, to contend that the Ohio legislation in question was enacted to promote *the public interest.* That can only mean the public interest of the State of Ohio, and the reason why such legislation is pernicious and unsafe is because it is based upon a discrimination in favor of local interests, and is hostile to the larger public interest and convenience involved in interstate commerce. Practically there may be no real or considerable conflict between the public interest that is local and that which is general. But, as the state legislatures are controlled by those who represent local demands, their action frequently results in measures detrimental to the interests of the greater public, and hence it is that the people of the United States have, by their constitution and the acts of Congress, removed the control and regulation of interstate commerce from the state legislatures.

Countenance seems to be given, in the opinion of the majority, to the contention that the power of Congress over the regulation of interstate commerce is not exclusive, by the observation that "the plaintiff in error accepted its charter subject necessarily to the condition that it would conform to such reasonable regulations as the State might, from time to time, establish, that were not in violation of the supreme law of the land. In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us is in itself a regulation of interstate commerce when applied to trains carrying passengers from one State to another."

But it has already been shown that Congress has legislated expressly in relation to interstate trains and railroads, has made rules and regulations for their control, and has established a tribunal to make other rules and regulations.

Besides, as was observed by Mr. Webster, in his argument in *Gibbons* v. *Ogden*, 9 Wheat. 1, 17: "The State may legislate, it is said, whenever Congress has not made a plenary exercise of its power. But who is to judge whether Congress has made this plenary exercise of power. It has done all that it deemed wise; and are the States now to do whatever Congress has left undone? Congress makes such rules as in its judgment the case requires, and those rules, whatever they are, constitute the system. All useful regulations do not consist in restraint; and that which Congress sees fit to leave free is a part of the regulation as much as the rest."

Attention is called to the fact that in the cases of *Hall* v. *De Cuir*, *Wabash Railway Company* v. *Illinois* and *Illinois Railroad* v. *Illinois*, there were no specific regulations by Congress as to providing separate accommodations for white and black passengers, as to rates of freight to be charged on interstate commerce, or as to stopping through trains at prescribed places, yet legislation by the States on those subjects was held void by this court as a trespass on the field of interstate commerce.

"The power of Congress to regulate commerce among the several States when the subjects of that power are national in their nature, is also exclusive. The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free, except as Congress might impose restraint. Therefore it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several States." *In re Rahrer*, 140 U. S. 545.

Mr. Justice White dissenting.

The statute is held not to be repugnant to the Constitution of the United States, because it is assumed to be but an exer-

cise of the lawful police power of the State, providing for the local convenience of its inhabitants. On this hypothesis, the statute is held valid, although it is conceded that it indirectly touches interstate commerce and remotely imposes a burden thereon. To my mind the Ohio statute, however, does not come within the purview of the reasoning advanced to support it, and therefore such considerations become irrelevant, and it is unnecessary to form any judgment as to their correctness.

My conception of the statute is that it imposes, under the guise of a police regulation for local convenience, a direct burden on interstate commerce, and, besides, expressly discriminates against such commerce, and therefore it is in conflict with the Constitution, even by applying the rules laid down in the authorities which are relied on as upholding its validity. Now, what does the statute provide? Does it require all railroads within the State to operate a given number of local trains and to stop them at designated points? Not at all. It commands railroads, *if they run three trains a day*, to cause at least three of such trains to be local trains, by compelling them to stop such trains at the places which the statute mentions. It follows then that under the statute one railroad, operating in the State, may be required to run only one local train a day and to stop such train, as the statute requires, and another railroad, reaching exactly the same territory and passing the same places, may be required to operate three trains a day and make the exacted stops with each of such trains. That is to say, although the same demands and the same local interest may exist as to the two roads, upon one is imposed a threefold heavier burden than upon the other. That this result of the statute is a discrimination it seems to me, in reason, is beyond question. If then the discrimination is certain, the only question which remains is, is it a discrimination against interstate commerce? If it is, confessedly the statute is repugnant to the Constitution of the United States. Whence then does the discrimination arise and upon what does it operate? It arises, alone, from the fact that the statute bases its requirement, not upon the demands of local con-

venience, but upon the volume of business done by the road, since it requires the road operating three trains to stop three as local trains, and the road operating one train to stop only one. But the number of trains operated is necessarily dependent upon the amount of business done, and the amount of business embraces interstate commerce as well as local business. But making the number of local trains dependent upon the volume of business is but to say that if a railroad has enough interstate business, besides its local business, to cause it to run one local and two interstate commerce trains each way each day, the increased trains thus required for the essential purposes of interstate commerce shall be local trains, whilst another railroad, which has no interstate commerce but only local business, requiring but one train a day, shall continue only to operate the one local train.

Whilst the power of the State of Ohio to direct all the railroads within its territory, to operate a sufficient number of local trains to meet the convenience of the inhabitants of the State may be *arguendo* conceded — although such question does not arise in this case and is not therefore necessary in my opinion to be decided — that State cannot, without doing violence to the commerce clause of the Constitution of the United States, impose upon the railroads operating within its borders a burden based, not upon local convenience, but upon the amount of interstate commerce business which the roads may do, thereby causing every interstate commerce railroad to have a burden resting upon it entirely disproportioned to local convenience and greatly more onerous than that resting upon roads doing a local business, and which have not a sufficient interstate business to compel them to operate three trains. To answer this reasoning by saying that the statute does not compel roads to operate the three trains and stop them, since it only compels them to stop them if they operate them, is to admit the discrimination, and to state the fact that the duty is not made by the statute dependent upon the local convenience, but upon the whole volume of business, which of course therefore includes interstate commerce business.

As the statute makes its exaction depend not upon a rule

by which the local wants are ascertained and supplied, but upon the business done, it therefore directly operates upon the volume of business, and only indirectly considers the possible local convenience. Under a law which thus proceeds, my mind refuses the conclusion that the law directly considers local convenience and only indirectly and remotely affects interstate commerce, when the reverse, it seems to me, is patent on the face of the statute. The repugnancy of the statute to the Constitution of the United States is shown by the principle decided by this court in *Osborne* v. *Florida*, 164 U. S. 650. In that case the State of Florida imposed a license on the business of express companies. In construing the statute, the Supreme Court of the State held that it applied only to business done solely within the State and not to business interstate in its character. This court, in reviewing and affirming the decision of the state court, said that as construed by the Florida court the statute was not repugnant to the Constitution, because it applied to business done solely within the State, and that the contrary would have been manifestly the case if, for the purpose of taxation, the State had taken into consideration the whole volume of business, including that of an interstate character. Now, if a taxing law of a State is repugnant to the Constitution because it operates upon the whole volume of business, both state and interstate, a law of the character of that now under consideration, which operates upon the whole volume of business of a railroad, state and interstate, is equally repugnant to the Constitution of the United States.

Whether in the enactment of the statute it was intended to discriminate is not the question, for, whatever may have been the intention of the lawmaker, if the necessary effect of the criterion established by the law is to cause its enforcement to produce an unlawful discrimination against interstate commerce by imposing a greater burden on the roads engaged in such commerce than upon other roads which do a purely local business, the statute is, I think, repugnant to the Constitution of the United States, and should not be upheld.

For these reasons, without meaning to imply that I do not assent to the conclusions stated by my brethren who have also,

on other grounds, dissented, I prefer to place my dissent on what seems to me the discrimination which the statute inevitably creates.